MINERAL EXPLORATION AND DEVELOPMENT ACT OF 1993

HEARING

BEFORE THE

SUBCOMMITTEE ON
ENERGY AND MINERAL RESOURCES

OF THE

COMMITTEE ON
NATURAL RESOURCES
HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRD CONGRESS

FIRST SESSION

ON

H.R. 322

TO MODIFY THE REQUIREMENTS APPLICABLE TO LOCATABLE MINERALS ON PUBLIC DOMAIN LANDS, CONSISTENT WITH THE PRINCIPLES OF SELF-INITIATION OF MINING CLAIMS, AND FOR OTHER PURPOSES

HEARING HELD IN WASHINGTON, DC
MARCH 11, 1993

Serial No. 103–11

Printed for the use of the Committee on Natural Resources

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MARCH 11, 1993

H.R. 322, THE MINERAL EXPLORATION AND DEVELOPMENT ACT OF 1993

THURSDAY, MARCH 11, 1993

HOUSE OF REPRESENTATIVES,
COMMITTEE ON NATURAL RESOURCES,
SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES,
Washington, DC.

The subcommittee met, pursuant to call, at 10:05 a.m., in room 1324, Longworth House Office Building, Hon. Richard H. Lehman (chairman of the subcommittee) presiding.

STATEMENT OF HON. RICHARD H. LEHMAN

Mr. LEHMAN. The subcommittee will come to order. I ask everyone to take their seats.

I want to welcome everyone to the hearing this morning. I know it is a little uncomfortable back there, but we will all try to do the best we can. We are trying to get everybody in who wants a seat.

At the outset, I certainly want to recognize the presence of the Secretary of the Interior this morning.

We are honored to have you here. We look forward to your testimony.

Today, we begin consideration of H.R. 322, the Mineral Exploration and Development Act of 1993, introduced by our colleague, Congressman Nick Rahall of West Virginia. H.R. 322 would replace the 1872 Mining Law, the last survivor of laws written to encourage settlement of the West. It replaces the 1872 law with a modern system designed to: one, eliminate the giveaway of valuable Federal lands; two, garner a fair return for the extraction of hard-rock minerals, such as gold, silver, and copper, from those Federal lands; three, provide environmental safeguards to minimize the adverse impacts of mining; and, finally, reclaim abandoned hard-rock mines in the West.

Congressman Rahall introduced legislation to reform the 1872 Mining Law during the last three Congresses. Earlier, in the 102d Congress, he introduced H.R. 918, the predecessor to H.R. 322, and six hearings were conducted on the bill. It was reported favorably by the full committee and then referred to the Agriculture and Merchant Marine Committees. The House began Floor consideration of the bill late in the last session but did not complete action on the measure prior to adjournment last fall.

[Text of the bill, H.R. 322, follows:]

103D CONGRESS
1ST SESSION

H. R. 322

To modify the requirements applicable to locatable minerals on public domain lands, consistent with the principles of self-initiation of mining claims, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 5, 1993

Mr. RAHALL (for himself, Mr. MILLER of California, Mr. VENTO, and Mr. LEHMAN) introduced the following bill; which was referred to the Committee on Natural Resources

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A BILL

To modify the requirements applicable to locatable minerals on public domain lands, consistent with the principles of self-initiation of mining claims, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Mineral Exploration and Development Act of 1993".

(b) TABLE OF CONTENTS.—

TITLE I—MINERAL EXPLORATION AND DEVELOPMENT

SEC. 101. DEFINITIONS, REFERENCES, AND COVERAGE.

(a) DEFINITIONS.—As used in this Act:

(1) The term "applicant" means any person applying for a plan of operations under this Act or a modification to or a renewal of a plan of operations under this Act.

(2) The term "claim holder" means the holder of a mining claim located or converted under this Act. Such term may include an agent of a claim holder.

(3) The term "diligence year" means the annual period commencing on the first day of the first month following the date a mining claim is located under this Act and each annual period thereafter, except as provided under section 404(b)(2).

(4) The term "land use plans" means those plans required under section 202 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1712) or the land management plans for National Forest System units required under section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1604), whichever is applicable.

(5) The term "legal subdivisions" means an aliquot quarter quarter section of land as established by the official records of the public land survey system, or a single lot as established by the official records of the public land survey system if the pertinent section is irregular and contains fractional lots, as the case may be.

(6) The term "locatable mineral" means any mineral not subject to disposition under any of the following:

(A) the Mineral Leasing Act (30 U.S.C. 181 and following);

(B) the Geothermal Steam Act of 1970 (30 U.S.C. 100 and following);

(C) the Act of July 31, 1947, commonly known as the Materials Act of 1947 (30 U.S.C. 601 and following); or

(D) the Mineral Leasing for Acquired Lands Act (30 U.S.C. 351 and following).

(7) The term "mineral activities" means any activity for, related to or incidental to mineral exploration, mining, beneficiation and processing activities for any locatable mineral, including access. When used with respect to this term—

(A) the term "exploration" means those techniques employed to locate the presence of a locatable mineral deposit and to establish its nature, position, size, shape, grade and value;

(B) the term "mining" means the processes employed for the extraction of a locatable mineral from the earth;

(C) the term "beneficiation" means the crushing and grinding of locatable mineral ore and such processes are employed to free the mineral from other constituents, including but not necessarily limited to, physical and chemical separation techniques; and

(D) the term "processing" means processes downstream of beneficiation employed to prepare locatable mineral ore into the final marketable product, including but not limited to, smelting and electrolytic refining.

(8) The term "mining claim" means a claim for the purposes of mineral activities.

(9) The term "National Conservation System unit" means any unit of the National Park System, National Wildlife Refuge System, National Wild and Scenic Rivers System, National Trails System, or a National Conservation Area, National Recreation Area, or a National Forest Monument.

(10) The term "operator" means any person, partnership or corporation with a plan of operations approved under this Act.

(11) The term "Secretary" means, unless otherwise provided in this Act—

(A) the Secretary of the Interior for the purposes of title I and title III;

(B) the Secretary of the Interior with respect to land under the jurisdiction of such Secretary and all other lands subject to this Act (except for lands under the jurisdiction of the Secretary of Agriculture) for the purposes of title II; and

(C) the Secretary of Agriculture with respect to lands under the jurisdiction of the Secretary of Agriculture for the purposes of title II.

(12) The term "substantial legal and financial commitments" means significant investments that have been made to develop mining claims under the general mining laws such as: long-term contracts for minerals produced; processing, beneficiation, or extraction facilities and transportation infrastructure; or other capital-intensive activities. Costs of acquiring the mining claim or claims, or the right to mine alone without other significant investments as detailed above, are not sufficient to constitute substantial legal and financial commitments.

(13) The term "surface management requirements" means the requirements and standards of

section 201, section 203 and section 204 of this Act, and such other standards as are established by the Secretary governing mineral activities and reclamation.

(b) REFERENCES.—(1) Any reference in this Act to the term "general mining laws" is a reference to those Acts which generally comprise 30 U.S.C. chapters 2, 12A, and 16, and sections 161 and 162.

(2) Any reference in this Act to the "Act of July 23, 1955", is a reference to the Act of July 23, 1955, entitled "An Act to amend the Act of July 31, 1947 (61 Stat. 681) and the mining laws to provide for multiple use of the surface of the same tracts of the public lands, and for other purposes." (30 U.S.C. 601 and following).

(c) COVERAGE.—This Act shall apply only to mineral activities and reclamation on lands and interests in land which are open to location as provided in this Act.

SEC. 102. LANDS OPEN TO LOCATION; RIGHTS UNDER THIS ACT.

(a) OPEN LANDS.—Mining claims may be located under this Act on lands and interests in lands owned by the United States to the extent that —

(1) such lands and interests were open to the location of mining claims under the general mining laws on the date of enactment of this Act;

(2) such lands and interests are opened to the location of mining claims by reason of section 204(f) or section 205 of this Act; and

(3) such lands and interests are opened to the location of mining claims after the date of enactment of this Act by reason of any administrative action or statute.

(b) RIGHTS.—The holder of a mining claim located or converted under this Act and maintained in compliance with this Act shall have the exclusive right of possession and use of the claimed land for mineral activities, including the right of ingress and egress to such claimed lands for such activities, subject to the rights of the United States under section 108 and title II.

SEC. 103. LOCATION OF MINING CLAIMS.

(a) GENERAL RULE.—A person may locate a mining claim covering lands open to the location of mining claims by posting a notice of location, containing the person's name and address, the time of location (which shall be the date and hour of location and posting), and a legal description of the claim. The notice of location shall be posted on a conspicuous, durable monument erected as near as practicable to the northeast corner of the mining claim. No person who is not a citizen, or a corporation organized under the laws of the United States or of any

State or the District of Columbia may locate or hold a claim under this Act.

(b) USE OF PUBLIC LAND SURVEY.—Except as provided in subsection (c), each mining claim located under this Act shall (1) be located in accordance with the public land survey system, and (2) conform to the legal subdivisions thereof. Except as provided in subsection (c), the legal description of the mining claim shall be based on the public land survey system and its legal subdivisions.

(c) EXCEPTIONS.—(1) If only a protracted survey exists for the public lands concerned, each of the following shall apply in lieu of subsection (b):

(A) The legal description of the mining claim shall be based on the protracted survey and the mining claim shall be located as near as practicable in conformance with a protracted legal subdivision.

(B) The mining claim shall be monumented on the ground by the erection of a conspicuous durable monument at each corner of the claim.

(C) The legal description of the mining claim shall include a reference to any existing survey monument, or where no such monument can be found within a reasonable distance, to a permanent natural object.

(2) If no survey exists for the public lands concerned, each of the following shall apply in lieu of subsection (b):

(A) The mining claim shall be a regular square, with each side laid out in cardinal directions, 40 acres in size.

(B) The claim shall be monumented on the ground by the erection of a conspicuous durable monument at each corner of the claim.

(C) The legal description of the mining claim shall be expressed in metes and bounds and shall include a reference to any existing survey monument, or where no such monument can be found within a reasonable distance, to a permanent natural object. Such description shall be of sufficient accuracy and completeness to permit recording of the claim upon the public land records and to permit the Secretary and other parties to find the claim upon the ground.

(3) In the case of a conflict between the boundaries of a mining claim as monumented on the ground and the description of such claim in the notice of location referred to in subsection (a), the notice of location shall be determinative.

(d) FILING WITH SECRETARY.—(1) Within 30 days after the location of a mining claim pursuant to this section, a copy of the notice of location referred to in sub-

section (a) shall be filed with the Secretary in an office designated by the Secretary.

(2) Whenever the Secretary receives a copy of a notice of location of a mining claim under this Act, the Secretary shall assign a serial number to the mining claim, and immediately return a copy of the notice of location to the locator of the claim, together with a certificate setting forth the serial number, a description of the claim, and the claim maintenance requirements of section 104. The Secretary shall enter the claim on the public land records.

(e) LANDS COVERED BY CLAIM.—A mining claim located under this Act shall include all lands and interests in lands open to location within the boundaries of the claim, subject to any prior mining claim referenced under subsections (c) and (d) of section 404.

(f) DATE OF LOCATION.—A mining claim located under this Act shall be effective based upon the time of location.

(g) CONFLICTING LOCATIONS.—Any conflicts between the holders of mining claims located or converted under this Act relating to relative superiority under the provisions of this Act may be resolved in adjudication proceedings before the Secretary. Such adjudication shall be determined on the record after opportunity for hearing.

It shall be incumbent upon the holder of a mining claim asserting superior rights in such proceedings to demonstrate to the Secretary that such person was the senior locator, or if such person is the junior locator, that prior to the location of the claim by such locator—

(1) the senior locator failed to file a copy of the notice of location within the time provided under subsection (d);

(2) the amount of rental paid by the senior locator at the time of filing the instrument referred to in subsection 104(d)(1) was less than the amount required to be paid by such locator; or

(3) the senior locator did not make the diligent development expenditures reported on the most recent affidavit filed with the instrument referred to in subsection 104(d)(1), or such expenditures did not comply with the requirements of subsection 104(b).

(h) EXTENT OF MINERAL DEPOSIT.—The boundaries of a mining claim located under this Act shall extend vertically downward.

SEC. 104. CLAIM MAINTENANCE REQUIREMENTS.

(a) IN GENERAL.—(1) Except as provided under subsection (b), in order to maintain a mining claim under this Act a claim holder shall pay an annual rental fee. The rental fee shall be paid on the basis of all land within the

boundaries of a mining claim (as described in notice of location filed under section 103(d)) at a rate established by the Secretary of not less than—

(A) $5 per acre in each of the first through fifth diligence years following location of the claim;

(B) $10 per acre in each of the sixth through tenth diligence years following location of the claim;

(C) $15 per acre in each of the eleventh through fifteenth diligence years following location of the claim;

(D) $20 per acre in each of the sixteenth through twentieth diligence years following location of the claim; and

(E) $25 per acre in the twenty-first diligence year following location of the claim, and each diligence year thereafter.

(2) The rental fee shall be due and payable at the time the claim holder files the instrument required under subsection (d)(1).

(3) The Secretary shall deposit all moneys received from rental fees collected under this subsection into the Fund referred to in title III.

(b) DILIGENT DEVELOPMENT EXPENDITURES.—(1) A claim holder may elect to reduce the amount of the rental fee required under subsection (a) by the amount of dili-

gent development expenditures made for mineral activities on or to the benefit of a mining claim during the same diligence year to which the rental fee would otherwise apply, except that in no event shall such reduction cause less than an annual rental fee of $2.50 per acre of all land within the boundaries of a mining claim (as described in notice of location filed under section 103(d)) to be paid. Such expenditures made for mineral activities on or to the benefit of any one claim, or more than one claim in a group of contiguous claims held by the same claim holder, may be deemed to have been performed for the benefit of the entire group of contiguous claims so long as the sum total of the expenditures equals the total amount of expenditures that would have been made if such expenditures had been made on or to the benefit of each individual claim in the group.

(2) Diligent development expenditures shall include those made for any of the following:

(A) Investigations and surveys, including geotechnical, geological, geophysical or geochemical surveys.

(B) Bulk mineral sampling and testing.

(C) Drilling.

(D) Environmental and engineering studies.

(E) The reclamation and restoration of land disturbed by mineral activities during exploration.

(F) Such other activities that constituted assessment work under the general mining laws prior to the date of enactment of this Act.

(G) Such other mineral activities as the Secretary may, by rule, establish.

(3) In the event a claim holder elects to reduce the amount of the rental fee under paragraph (1), such claim holder shall file an affidavit under this paragraph at the time such claim holder files the instrument required under subsection (d)(1). The affidavit shall contain a detailed description of the value and nature of all diligent development expenditures made under this subsection and shall be of sufficient detail as to permit validation by the Secretary of the expenditure amounts and beneficial nature of the expenditures.

(4) A claim holder shall maintain documentary proof of diligent development expenditures reported on the affidavit referred to in paragraph (3) for a period of 5 years after the diligence year to which such expenditures apply. Such documentary proof shall be made available at the request of the Secretary for the purpose of the validation referred to in paragraph (3) and the audit referred to in subsection (f).

(c) MINIMUM RENTAL.—(1) A claim holder shall only be required to pay a minimum annual rental fee of $2.50 per acre of all land within the boundaries of a mining claim (as described in notice of location filed under section 103(d)) under any of the following circumstances:

(A) If a claim holder demonstrates to the Secretary that such claim holder is prevented from making diligent development expenditures under subsection (b) by reason of—

(i) any judicial proceeding or administrative action; or

(ii) the fact that the mining claim or group of contiguous claims is surrounded by lands over which a right-of-way for the performance of such requirement has been denied, is in litigation, or is in the process of acquisition under State law, or that other legal impediments exist which affect the right of the claimant to enter upon the surface of such claim or group of contiguous claims or to gain access to the boundaries thereof or to conduct mineral activities thereon;

pursuant to such rules as the Secretary may prescribe governing the length and termination of the minimum rental requirement.

(B) By reason of section 5 of Public Law 94–429, commonly known as the Mining in the Parks Act, for any claim subject to such section after the conversion of such claim under section 404.

(C) By reason of such other laws that heretofore removed the applicability of the assessment work requirement of the general mining laws for any claim subject to such laws after the conversion of such claim under section 404.

(2) The rental fee shall be due and payable at the time the claim holder files the instrument required under subsection (d)(1). Included with such instrument shall be a statement setting forth the reasons why the claim holder is only required to pay the minimum rental.

(3) The Secretary shall deposit all moneys received from rental fees collected under this subsection into the Fund referred to in title III.

(d) INSTRUMENT.—(1) In order to maintain a mining claim under this Act, a claim holder shall, on or before the date which is the last day of the third calendar month after the anniversary date of each diligence year for such claim, file an instrument with the Secretary containing the name and address of the claim holder and the serial number assigned to the claim pursuant to section 103(d). The

instrument shall be accompanied by, as the case may be, the following—

(A) the rental fee required for the applicable diligence year referred to in subsection (a)(1);

(B) the amount of rental fee required due to the reduction of such fee by diligent development expenditures under subsection (b)(1), and the affidavit referred to in subsection (b)(3); or

(C) the minimum rental fee referred to in subsection (c)(1) and the statement referred to in subsection (c)(2).

(2) If, in any diligence year, a claim holder fails to file the instrument referred to in paragraph (1) within the period referred to in such paragraph or fails, in any respect, to comply with the requirements of paragraph (1), the Secretary shall immediately provide notice thereof to the claim holder and after 30 days from the date of such notice the claim shall be deemed forfeited and such claim shall be null and void, except as provided under subsection (e). Such notice shall be sent to the claim holder by registered or certified mail to the address provided by such claim holder in the notice of location referred to in section 103(a) or on the last instrument referred to in subsection (d)(1) filed by such claim holder, whichever is most recent. In the event such notice is returned as undelivered, the

Secretary shall be deemed to have fulfilled the notice requirements of this paragraph.

(e) FAILURE TO COMPLY.—(1) No claim may be deemed forfeited and declared null and void by the Secretary due to a failure to comply with the requirements referred to in subsection (d) if the claim holder corrects such failure to the satisfaction of the Secretary within 10 days after the date such claim holder was required to file the instrument referred to in subsection (d)(1).

(2) No claim may be deemed forfeited and declared null and void by the Secretary due to a failure to comply with the requirements referred to in subsection (d) if, within 10 days after date of the notice referred to in subsection (d)(2), the claim holder corrects such failure to the satisfaction of the Secretary, and if the Secretary determines that such failure was justifiable or not due to a lack of reasonable diligence on the part of the claim holder, or that such failure was inadvertent.

(f) AUDITS.—The Secretary is authorized to conduct such audits of claim holders as he deems necessary for the purpose of ensuring compliance with the requirements of this section. For purposes of performing such audits, the Secretary shall, at reasonable times and upon request, have access to, and may copy, all books, papers and other

documents that relate to compliance with this section of any person subject to the provisions of this section.

SEC. 105. PENALTIES.

(a) VIOLATION.—Any claim holder who—

(1) knowingly or willfully posts on a mining claim or files a notice of location with the Secretary under section 103 that contains false, inaccurate or misleading statements;

(2) knowingly or willfully prepares, maintains, or submits false, inaccurate, or misleading information on diligent development expenditures on the affidavit referred to in section 104(b)(3); or

(3) fails or refuses to permit an audit pursuant to section 104(f);

shall be liable for a penalty of not more than $5,000 per violation. Each day of continuing violation may be deemed a separate violation for purposes of penalty assessments.

(b) REVIEW.—No civil penalty under this section shall be assessed until the claim holder charged with the violation has been given the opportunity for a hearing on the record under section 202(f).

SEC. 106. PREEMPTION.

The requirements of this title shall preempt any conflicting requirements of any State, or political subdivision thereof relating to the location and maintenance of mining

claims as provided for by this Act. The filing requirements of section 314 of the Federal Land Policy and Management Act (43 U.S.C. 1744) shall not apply with respect to any mining claim located or converted under this Act.

SEC. 107. LIMITATION ON PATENT ISSUANCE.

(a) MINING CLAIMS.—After January 5, 1993, no patent shall be issued by the United States for any mining claim located under the general mining laws unless the Secretary of the Interior determines that, for the claim concerned—

(1) a patent application was filed with the Secretary on or before January 5, 1993; and

(2) all requirements established under sections 2325 and 2326 of the Revised Statutes (30 U.S.C. 29 and 30) for vein or lode claims and sections 2329, 2330, 2331, and 2333 of the Revised Statutes (30 U.S.C. 35, 36, and 37) for placer claims were fully complied with by that date.

If the Secretary makes the determinations referred to in paragraphs (1) and (2) for any mining claim, the holder of the claim shall be entitled to the issuance of a patent in the same manner and degree to which such claim holder would have been entitled to prior to the enactment of this Act, unless and until such determinations are withdrawn

or invalidated by the Secretary or by a court of the United States.

(b) MILL SITES.—After January 5, 1993, no patent shall be issued by the United States for any mill site claim located under the general mining laws unless the Secretary of the Interior determines that for the mill site concerned—

(1) a patent application for such land was filed with the Secretary on or before January 5, 1993; and

(2) all requirements applicable to such patent application were fully complied with by that date.

If the Secretary makes the determinations referred to in paragraphs (1) and (2) for any mill site claim, the holder of the claim shall be entitled to the issuance of a patent in the same manner and degree to which such claim holder would have been entitled to prior to the enactment of this Act, unless and until such determinations are withdrawn or invalidated by the Secretary or by a court of the United States.

SEC. 108. MULTIPLE MINERAL DEVELOPMENT AND SURFACE RESOURCES.

(a) IN GENERAL.—The provisions of sections 4 and 6 of the Act of August 13, 1954 (30 U.S.C. 524 and 526), commonly known as the Multiple Minerals Development

Act, and the provisions of section 4 of the Act of July 23, 1955 (30 U.S.C. 612), shall apply to all mining claims located or converted under this Act.

(b) ENFORCEMENT.—The Secretary of the Interior, or the Secretary of Agriculture, as the case may be, shall take such actions as may be necessary to ensure the compliance by claim holders with section 4 of the Act of July 23, 1955 (30 U.S.C. 612).

SEC. 109. MINERAL MATERIALS.

(a) DETERMINATIONS.—Section 3 of the Act of July 23, 1955 (30 U.S.C. 611), is amended as follows:

(1) Insert "(a)" before the first sentence.

(2) Strike "or cinders" and insert in lieu thereof "cinders, or clay".

(3) Add the following new subsection at the end thereof:

"(b)(1) Subject to valid existing rights, after the date of enactment of the Mineral Exploration and Development Act of 1993, all deposits of mineral materials referred to in subsection (a), including the block pumice referred to in such subsection, shall only be subject to disposal under the terms and conditions of the Materials Act of 1947.

"(2) For purposes of paragraph (1), the term 'valid existing rights' means that a mining claim located for any such mineral material had some property giving it the dis-

tinct and special value referred to in subsection (a), or as the case may be, met the definition of block pumice referred to in such subsection, was properly located and maintained under the general mining laws prior to the date of enactment of the Mineral Exploration and Development Act of 1993, and was supported by a discovery of a valuable mineral deposit within the meaning of the general mining laws on the date of enactment of the Mineral Exploration and Development Act of 1993 and that such claim continues to be valid.".

(b) MINERAL MATERIALS DISPOSAL CLARIFICATION.—Section 4 of the Act of July 23, 1955 (30 U.S.C. 612), is amended as follows:

(1) In subsection (b) insert "and mineral material" after "vegetative".

(2) In subsection (c) insert "and mineral material" after "vegetative".

(c) CONFORMING AMENDMENT.—Section 1 of the Act of July 31, 1947, entitled "An Act to provide for the disposal of materials on the public lands of the United States" (30 U.S.C. 601 and following) is amended by striking "common varieties of" in the first sentence.

(d) SHORT TITLES.—

(1) SURFACE RESOURCES.—The Act of July 23, 1955, is amended by inserting after section 7 the following new section:

"SEC. 8. This Act may be cited as the 'Surface Resources Act of 1955'.".

(2) MINERAL MATERIALS.—The Act of July 31, 1947, entitled "An Act to provide for the disposal of materials on the public lands of the United States" (30 U.S.C. 601 and following) is amended by inserting after section 4 the following new section:

"SEC. 5. This Act may be cited as the 'Materials Act of 1947'.".

(e) REPEAL.—(1) The Act of August 4, 1892 (27 Stat. 348) commonly known as the Building Stone Act is hereby repealed.

(2) The Act of January 31, 1901 (30 U.S.C. 162) commonly known as the Saline Placer Act is hereby repealed.

TITLE II—ENVIRONMENTAL CONSIDERATIONS OF MINERAL EXPLORATION AND DEVELOPMENT

SEC. 201. SURFACE MANAGEMENT.

(a) IN GENERAL.—Notwithstanding the last sentence of section 302(b) of the Federal Land Policy and Manage-

ment Act of 1976, and in accordance with this title and other applicable law, the Secretary shall require that mineral activities and reclamation be conducted so as to minimize adverse impacts to the environment.

(b) PLANS OF OPERATION.—(1) Except as provided under paragraph (2), no person may engage in mineral activities that may cause a disturbance of surface resources unless such person has filed a plan of operations with, and received approval of such plan of operations, from the Secretary.

(2)(A) A plan of operations may not be required for mineral activities related to exploration that cause a negligible disturbance of surface resources not involving the use of mechanized earth moving equipment, suction dredging, explosives, the use of motor vehicles in areas closed to off-road vehicles, the construction of roads, drill pads, or the use of toxic or hazardous materials.

(B) A plan of operations may not be required for mineral activities related to exploration that, after notice to the Secretary, involve only a minimal and readily reclaimable disturbance of surface resources related to and including initial test drilling not involving the construction of access roads, except activities under notice shall not commence until an adequate financial guarantee is established for such activities pursuant to subsection (l).

(c) CONTENTS OF PLANS.—Each proposed plan of operations shall include a mining permit application and a reclamation plan together with such documentation as necessary to ensure compliance with applicable Federal and State environmental laws and regulations.

(d) MINING PERMIT APPLICATION REQUIREMENTS.—The mining permit referred to in subsection (c) shall include such terms and conditions as prescribed by the Secretary, and each of the following:

(1) The name and mailing address of—

(A) the applicant for the mining permit;

(B) the operator if different than the applicant;

(C) each claim holder of the lands subject to the plan of operations if different than the applicant;

(D) any subsidiary, affiliate or person controlled by or under common control with the applicant, or the operator or each claim holder, if different than the applicant; and

(E) the owner or owners of any land, or interests in any such land, not subject to this Act, within or adjacent to the proposed mineral activities.

(2) A statement of any plans of operation held by the applicant, operator or each claim holder if different than the applicant, or any subsidiary, affiliate, or person controlled by or under common control with the applicant, operator or each claim holder if different than the applicant.

(3) A statement of whether the applicant, operator or each claim holder if different than the applicant, and any subsidiary, affiliate, or person controlled by or under common control with the applicant, operator or each claim holder if different than the applicant has an outstanding violation of this Act, any surface management requirements, or applicable air and water quality laws and regulations and if so, a brief explanation of the facts involved, including identification of the site and the nature of the violation.

(4) A description of the type and method of mineral activities proposed, the engineering techniques proposed to be used and the equipment proposed to be used.

(5) The anticipated starting and termination dates of each phase of the mineral activities proposed.

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(6) A map, to an appropriate scale, clearly showing the land to be affected by the proposed mineral activities.

(7) A description of the quantity and quality of surface and ground water resources within and along the boundaries of, and adjacent to, the area subject to mineral activities based on 12 months of pre-disturbance monitoring.

(8) A description of the biological resources found in or adjacent to the area subject to mineral activities, including vegetation, fish and wildlife, riparian and wetland habitats.

(9) A description of the monitoring systems to be used to detect and determine whether compliance has and is occurring consistent with the surface management requirements and to regulate the effects of mineral activities and reclamation on the site and surrounding environment, including but not limited to, groundwater, surface water, air and soils.

(10) Accident contingency plans that include, but are not limited to, immediate response strategies, corrective measures to mitigate impacts to fish and wildlife, ground and surface waters, notification procedures and waste handling and toxic material neutralization.

(11) Any measures to comply with any conditions on minerals activities and reclamation that may be required in the applicable land use plan, including any condition stipulated pursuant to section 204(d)(1)(B).

(12) A description of measures planned to exclude fish and wildlife resources from the area subject to mineral activities by covering, containment, or fencing of open waters, beneficiation, and processing materials; or maintenance of all facilities in a condition that is not harmful to fish and wildlife.

(13) Such environmental baseline data as the Secretary, by rule, shall require sufficient to validate the determinations required for plan approval under this Act.

(e) RECLAMATION PLAN APPLICATION REQUIREMENTS.—The reclamation plan referred to in subsection (c) shall include such terms and conditions as prescribed by the Secretary, and each of the following:

(1) A description of the condition of the land subject to the mining permit prior to the commencement of any mineral activities.

(2) A description of reclamation measures proposed pursuant to the requirements of subsections (m) and (n).

(3) The engineering techniques to be used in reclamation and the equipment proposed to be used.

(4) The anticipated starting and termination dates of each phase of the reclamation proposed.

(5) A description of the proposed condition of the land following the completion of reclamation.

(6) A description of the maintenance measures that will be necessary to meet the surface management requirements of this Act, such as, but not limited to, drainage water treatment facilities, or liner maintenance and control.

(7) The consideration which has been given to making the condition of the land after the completion of mineral activities and final reclamation consistent with the applicable land use plan.

(f) PUBLIC PARTICIPATION.—(1) Concurrent with submittal of a plan of operations, or a renewal application for a plan of operations, the applicant shall publish a notice in a newspaper of local circulation for 4 consecutive weeks that shall include: the name of the applicant, the location of the proposed mineral activities, the type and expected duration of the proposed mineral activities, and the intended use of the land after the completion of mineral activities and reclamation. The Secretary shall also notify in writing other Federal, State and local govern-

ment agencies that regulate mineral activities or land planning decisions in the area subject to mineral activities.

(2) Copies of the complete proposed plan of operations shall be made available for public review for 30 days at the office of the responsible Federal surface management agency located nearest to the location of the proposed mineral activities, and at the county courthouse of the county in which the mineral activities are proposed to be located, prior to final decision by the Secretary. During this period, any person and the authorized representative of a Federal, State or local governmental agency shall have the right to file written comments relating to the approval or disapproval of the plan of operations. The Secretary shall immediately make such comments available to the applicant.

(3) Any person that is or may be adversely affected by the proposed mineral activities may request, after filing written comments pursuant to paragraph (2), a public hearing to be held in the county in which the mineral activities are proposed. If a hearing is requested, the Secretary shall conduct a hearing. When a hearing is to be held, notice of such hearing shall be published in a newspaper of local circulation for 2 weeks prior to the hearing date.

(g) PLAN APPROVAL.—(1) After providing notice and opportunity for public comment and hearing, the Secretary may approve, require modifications to, or deny a proposed plan of operations, except as provided in section 405. To approve a plan of operations, the Secretary shall make each of the following determinations:

(A) The mining permit application and reclamation plan are complete and accurate.

(B) The applicant has demonstrated that reclamation as required by this Act can be accomplished under the reclamation plan and would have a high probability of success based on an analysis of such reclamation measures in areas of similar geochemistry, topography and hydrology.

(C) The proposed mineral activities, reclamation and condition of the land after the completion of mineral activities and final reclamation would be consistent with the land use plan applicable to the area subject to mineral activities.

(D) The area subject to the proposed plan of operations is not included within an area designated unsuitable under section 204 for the types of mineral activities proposed.

(E) The applicant has demonstrated that the plan of operations will be in compliance with the re-

quirements of all other applicable Federal requirements, and any State requirements agreed to by the Secretary pursuant to subsection 203(c).

(2) Final approval of a plan of operations under this subsection shall be conditioned upon compliance with subsection (l) and, based on information supplied by the applicant, a determination of the probable hydrologic consequences of the proposed mineral activities and reclamation.

(3)(A) A plan of operations under this section shall not be approved if the applicant, operator, or any claim holder if different than the applicant, or any subsidiary, affiliate, or person controlled by or under common control with the applicant, operator or each claim holder if different than the applicant, is currently in violation of this Act, any surface management requirement or of any applicable air and water quality laws and regulations at any site where mineral activities have occurred or are occurring.

(B) The Secretary shall suspend an approved plan of operations if the Secretary determines that any of the entities described in section 201(d)(1) were in violation of the surface management requirements at the time the plan of operations was approved.

(C) A plan of operations referred to in this subsection shall not be approved or reinstated, as the case may be, until the applicant submits proof that the violation has been corrected or is in the process of being corrected to the satisfaction of the Secretary; except that no proposed plan of operations, after opportunity for a hearing, shall be approved for any applicant, operator, or each claim holder if different than the applicant with a demonstrated pattern of willful violations of the surface management requirements of such nature and duration and with such resulting irreparable damage to the environment as to clearly indicate an intent not to comply with the surface management requirements.

(h) TERM OF PERMIT; RENEWAL.—(1) The approval of a plan of operations shall be for a stated term. The term shall be no greater than that necessary to accomplish the proposed operations, and in no case for more than 10 years, unless the applicant demonstrates that a specified longer term is reasonably needed to obtain financing for equipment and the opening of the operation.

(2) Failure by the operator to commence mineral activities within one year of the date scheduled in an approved plan of operations shall be deemed to require a modification of the plan.

(3) A plan of operations shall carry with it the right of successive renewal upon expiration only with respect to operations on areas within the boundaries of the existing plan of operations, as approved. An application for renewal of such plan of operations shall be approved unless the Secretary determines, in writing, any of the following:

(A) The terms and conditions of the existing plan of operations are not being met.

(B) Mineral activities and reclamation activities as approved under the plan of operations are not in compliance with the surface management requirements of this Act.

(C) The operator has not demonstrated that the financial guarantee would continue to apply in full force and effect for the renewal term.

(D) Any additional revised or updated information required by the Secretary has not been provided.

(E) The applicant has not demonstrated that the plan of operations will be in compliance with the requirements of all other applicable Federal requirements, and any State requirements agreed to by the Secretary pursuant to subsection 203(c).

(4) A renewal of a plan of operations shall be for a term not to exceed the period of the original plan as pro-

vided in paragraph (1). Application for plan renewal shall be made at least 120 days prior to the expiration of an approved plan.

(5) Any person that is, or may be, adversely affected by the proposed mineral activities may request a public hearing to be held in the county in which the mineral activities are proposed. If a hearing is requested, the Secretary shall conduct a hearing. When a hearing is held, notice of such hearing shall be published in a newspaper of local circulation for 2 weeks prior to the hearing date.

(i) PLAN MODIFICATION.—(1) Except as provided under section 405, during the term of a plan of operations the operator may submit an application to modify the plan. To approve a proposed modification to a plan of operations the Secretary shall make the determinations set forth under subsection (g)(1). The Secretary shall establish guidelines regarding the extent to which requirements for plans of operations under this section shall apply to applications to modify a plan of operations based on whether such modifications are deemed significant or minor; except that: (A) any significant modifications shall at a minimum be subject to subsection (f), and (B) any modification proposing to extend the area covered by the plan of operations (except for incidental boundary revi-

sions) must be made by application for a new plan of operations.

(2) The Secretary may, upon a review of a plan of operations or a renewal application, require reasonable modification to such plan upon a determination that the requirements of this Act cannot be met if the plan is followed as approved. Such determination shall be based on a written finding and subject to notice and hearing requirements established by the Secretary.

(j) TEMPORARY CESSATION OF OPERATIONS.—(1) Before temporarily ceasing mineral activities or reclamation for a period of 180 days or more under an approved plan of operations or portions thereof, an operator shall first submit a complete application for temporary cessation of operations to the Secretary for approval.

(2) The application for approval of temporary cessation of operations shall include such terms and conditions as prescribed by the Secretary, including but not limited to the steps that shall be taken during the cessation of operations period to minimize impacts on the environment. After receipt of a complete application for temporary cessation of operations the Secretary shall conduct an inspection of the area for which temporary cessation of operations has been requested.

(3) To approve an application for temporary cessation of operations, the Secretary shall make each of the following determinations:

(A) The methods for securing surface facilities and restricting access to the permit area, or relevant portions thereof, shall effectively ensure against hazards to the health and safety of the public and fish and wildlife.

(B) Reclamation is contemporaneous with mineral activities as required under the approved reclamation plan, except in those areas specifically designated in the application for temporary cessation of operations for which a delay in meeting such standards is necessary to facilitate the resumption of operations.

(C) The amount of financial assurance filed with the plan of operations is sufficient to assure completion of the reclamation plan in the event of forfeiture.

(D) Any outstanding notices of violation and cessation orders incurred in connection with the plan of operations for which temporary cessation is being requested are either stayed pursuant to an administrative or judicial appeal proceeding or are in the

process of being abated to the satisfaction of the Secretary.

(k) REVIEW.—Any decision made by the Secretary under subsections (g), (h), (i), (j) or (l) shall be subject to review under section 202(f).

(l) BONDS.—(1) Before any plan of operations is approved pursuant to this Act, or any mineral activities are conducted pursuant to subsection (b)(2), the operator shall file with the Secretary financial assurance payable to the United States and conditional upon faithful performance of all requirements of this Act. The financial assurance shall be provided in the form of a surety bond, trust fund, cash or equivalent. The amount of the financial assurance shall be sufficient to assure the completion of reclamation satisfying the requirements of this Act if the work had to be performed by the Secretary in the event of forfeiture, and the calculation shall take into account the maximum level of financial exposure which shall arise during the mineral activity including, but not limited to, provision for accident contingencies.

(2) The financial assurance shall be held for the duration of the mineral activities and for an additional period to cover the operator's responsibility for revegetation under subsection (n)(6)(B).

(3) The amount of the financial assurance and the terms of the acceptance of the assurance shall be adjusted by the Secretary from time to time as the area requiring coverage is increased or decreased, or where the costs of reclamation or treatment change, but the financial assurance must otherwise be in compliance with this section. The Secretary shall specify periodic times, or set a schedule, for reevaluating or adjusting the amount of financial assurance.

(4) Upon request, and after notice and opportunity for public comment, the Secretary may release in whole or in part the financial assurance if the Secretary determines each of the following:

(A) Reclamation covered by the financial assurance has been accomplished as required by this Act.

(B) The operator has declared that the terms and conditions of any other applicable Federal requirements, and State requirements pursuant to subsection 203(b), have been fulfilled.

(5) The release referred to in paragraph (4) shall be according to the following schedule:

(A) After the operator has completed the backfilling, regrading and drainage control of an area subject to mineral activities and covered by the financial assurance, and has commenced revegetation

on the regraded areas subject to mineral activities in accordance with the approved plan of operations, 50 percent of the total financial assurance secured for the area subject to mineral activities may be released.

(B) After the operator has completed successfully all mineral activities and reclamation activities and all requirements of the plan of operations and the reclamation plan and all the requirements of this Act have in fact been fully met, the remaining portion of the financial assurance may be released.

(6) During the period following release of the financial assurance as specified in paragraph (5)(A), until the remaining portion of the financial assurance is released as provided in paragraph (5)(B), the operator shall be required to meet all applicable standards of this Act and the plan of operations and the reclamation plan.

(7) Where any discharge from the area subject to mineral activities requires treatment in order to meet the applicable effluent limitations, the treatment shall be monitored during the conduct of mineral activities and reclamation and shall be fully covered by financial assurance and no financial assurance or portion thereof for the plan of operations shall be released until the operator has met

all applicable effluent limitations and water quality standards for one full year without treatment.

(8) Jurisdiction under this Act shall terminate upon release of the final bond. If the Secretary determines, after final bond release, that an environmental hazard resulting from the mineral activities exists, or the terms and conditions of the plan of operations or the surface management requirements of this Act were not fulfilled in fact at the time of release, the Secretary shall reassert jurisdiction and all applicable surface management and enforcement provisions shall apply for correction of the condition.

(m) RECLAMATION.—(1) Except as provided under paragraphs (5) and (7) of subsection (n), lands subject to mineral activities shall be restored to a condition capable of supporting the uses to which such lands were capable of supporting prior to surface disturbance, or other beneficial uses, provided such other uses are not inconsistent with applicable land use plans.

(2) All required reclamation shall proceed as contemporaneously as practicable with the conduct of mineral activities and shall use the best technology currently available.

(n) RECLAMATION STANDARDS.—The Secretary shall establish reclamation standards which shall include, but

not necessarily be limited to, provisions to require each of the following:

(1) SOILS.—(A) Topsoil removed from lands subject to mineral activities shall be segregated from other spoil material and protected for later use in reclamation. If such topsoil is not replaced on a backfill area within a time-frame short enough to avoid deterioration of the topsoil, vegetative cover or other means shall be used so that the topsoil is preserved from wind and water erosion, remains free of any contamination by acid or other toxic material, and is in a useable condition for sustaining vegetation when restored during reclamation.

(B) In the event the topsoil from lands subject to mineral activities is of insufficient quantity or of inferior quality for sustaining vegetation, and other suitable growth media removed from the lands subject to the mineral activities are available that shall support vegetation, the best available growth medium shall be removed, segregated and preserved in a like manner as under subparagraph (A) for sustaining vegetation when restored during reclamation.

(C) Mineral activities shall be conducted to prevent any contamination or toxification of soils. If any contamination or toxification occurs in violation

of this subparagraph, the operator shall neutralize the toxic material, decontaminate the soil, and dispose of any toxic or acid materials in a manner which complies with this section and any other applical Federal or State law.

(2) STABILIZATION.—All surface areas subject to mineral activities, including spoil material piles, waste material piles, ore piles, subgrade ore piles, and open or partially backfilled mine pits which meet the requirements of paragraph (5) shall be stabilized and protected during mineral activities and reclamation so as to effectively control erosion and minimize attendant air and water pollution.

(3) EROSION.—Facilities such as but not limited to basins, ditches, streambank stabilization, diversions or other measures, shall be designed, constructed and maintained where necessary to control erosion and drainage of the area subject to mineral activities, including spoil material piles and waste material piles prior to the use of such material to comply with the requirements of paragraph (5) and for the purposes of paragraph (7), and including ore piles and subgrade ore piles.

(4) HYDROLOGIC BALANCE.—(A) Mineral activities shall be conducted to minimize disturbances

to the prevailing hydrologic balance of the area subject to mineral activities and adjacent areas and to the quality and quantity of water in surface and ground water systems, including streamflow, in the area subject to mineral activities and adjacent areas, and in all cases the operator shall comply with applicable Federal or State effluent limitations and water quality standards.

(B) Mineral activities shall prevent the generation of acid or toxic drainage during the mineral activities and reclamation, to the extent possible using the best available demonstrated control technology; and the operator shall prevent any contamination of surface and ground water with acid or other toxic mine drainage and shall prevent or remove water from contact with acid or toxic producing deposits.

(C) Reclamation shall, to the extent possible, also include restoration of the recharge capacity of the area subject to mineral activities to approximate premining condition.

(D) Where surface or underground water sources used for domestic or agricultural use have been diminished, contaminated or interrupted as a proximate result of mineral activities, such water resource shall be restored or replaced.

(5) GRADING.—(A) Except as provided under this paragraph (7), the surface area disturbed by mineral activities shall be backfilled, graded and contoured to its natural topography.

(B) The requirement of subparagraph (A) shall not apply with respect to an open mine pit if the Secretary finds that such open pit or partially backfilled pit would not pose a threat to the public health or safety or have an adverse effect on the environment in terms of surface or groundwater pollution.

(C) In instances where complete backfilling of an open pit is not required, the pit shall be graded to blend with the surrounding topography as much as practicable and revegetated in accordance with paragraph (6).

(6) REVEGETATION.—(A) Except in such instances where the complete backfill of an open mine pit is not required under paragraph (5), the area subject to mineral activities, including any excess spoil material pile and excess waste pile, shall be revegetated in order to establish a diverse, effective and permanent vegetative cover of the same seasonal variety native to the area subject to mineral activities, capable of self-regeneration and plant succes-

sion and at least equal in extent of cover to the natural revegetation of the surrounding area.

(B) In order to insure compliance with subparagraph (A), the period for determining successful revegetation shall be for a period of 5 full years after the last year of augmented seeding, fertilizing, irrigation or other work, except that such period shall be 10 full years where the annual average precipitation is 26 inches or less.

(7) EXCESS SPOIL AND WASTE.—(A) Spoil material and waste material in excess of that required to comply with paragraph (5) shall be transported and placed in approved areas, in a controlled manner in such a way so as to assure long-term mass stability and to prevent mass movement. In addition to the measures described under paragraph (3), internal drainage systems shall be employed, as may be required, to control erosion and drainage. The design of such excess spoil material piles and excess waste material piles shall be certified by a qualified professional engineer.

(B) Excess spoil material piles and excess waste material piles shall be graded and contoured to blend with the surrounding topography as much as

practicable and revegetated in accordance with paragraph (6).

(8) SEALING.—All drill holes, and openings on the surface associated with underground mineral activities, shall be sealed when no longer needed for the conduct of mineral activities to ensure protection of the public, fish and wildlife and the environment.

(9) STRUCTURES.—All buildings, structures or equipment constructed, used or improved during mineral activities shall be removed, unless the Secretary determines that the buildings, structures or equipment shall be of beneficial use in accomplishing the post-mining uses or for environmental monitoring.

(10) FISH AND WILDLIFE.—All fish and wildlife habitat in areas subject to mineral activities shall be restored in a manner commensurate with or superior to habitat conditions which existed prior to the mineral activities, including such conditions as may be prescribed by the Director, Fish and Wildlife Service.

(o) ADDITIONAL STANDARDS.—The Secretary may, by regulation, establish additional standards to address the specific environmental impacts of selected methods of

mineral activities, such as, but not limited to, cyanide leach mining.

(p) DEFINITIONS.—As used in subsections (m) and (n):

(1) The term "best technology currently available" means equipment, devices, systems, methods, or techniques which are currently available anywhere even if not in routine use in mineral activities. The term includes, but is not limited to, construction practices, siting requirements, vegetative selection and planting requirements, scheduling of activities and design of sedimentation ponds. Within the constraints of the surface management requirements of this Act, the Secretary shall have the discretion to determine the best technology currently available on a case-by-case basis.

(2) The term "best available demonstrated control technology" means equipment, devices, systems, methods, or techniques which have demonstrated engineering and economic feasibility and practicality in preventing disturbances to hydrologic balance during mineral activities and reclamation. Such techniques will have shown to be effective and practical methods of acid and other mine water pollution elimination or control, and other pollution affecting water quality.

The "best available demonstrated control technology" will not generally be in routine use in mineral activities. Within the constraints of the surface management requirements of this Act, the Secretary shall have the discretion to determine the best available demonstrated control technology on a case-by-case basis.

(3) The term "spoil material" means the overburden, or non-mineralized material of any nature, consolidated or unconsolidated, that overlies a deposit of any locatable mineral that is removed in gaining access to, and extracting, any locatable mineral, or any such material disturbed during the conduct of mineral activities.

(4) The term "waste material" means the material resulting from mineral activities involving beneficiation, including but not limited to tailings, and such material resulting from mineral activities involving processing, to the extent such material is not subject to subtitle C of the Resource Conservation and Recovery Act of 1976 or the Uranium Mill Tailings Radiation Control Act.

(5) The term "ore piles" means ore stockpiled for beneficiation prior to the completion of mineral activities and reclamation.

(6) The term "subgrade ore" means ore that is too low in grade to be of economic value at the time of extraction but which could reasonably be economical in the foreseeable future.

(7) The term "excess spoil" means that spoil material that may be excess of the amount necessary to comply with the requirements of subsection (m)(3).

(8) The term "excess waste" means that waste material that may be excess of the amount necessary to comply with the requirements of subsection (m)(3).

SEC. 202. INSPECTION AND ENFORCEMENT.

(a) INSPECTIONS AND MONITORING.—(1) The Secretary shall make such inspections of mineral activities so as to ensure compliance with the surface management requirements. The Secretary shall establish a frequency of inspections for mineral activities conducted under an approved plan of operations, but in no event shall such inspection frequency be less than one complete inspection per calendar quarter or two complete inspections annually for a plan of operations for which the Secretary approves an application under section 201(j).

(2)(A) Any person who has reason to believe they are or may be adversely affected by mineral activities due to

any violation of the surface management requirements may request an inspection. The Secretary shall determine within 10 days of receipt of the request whether the request states a reason to believe that a violation exists, except in the event the person alleges and provides reason to believe that an imminent danger as provided by subsection (b)(2) exists the 10 day period shall be waived and the inspection conducted immediately. When an inspection is conducted under this paragraph, the Secretary shall notify the person filing the complaint and such person shall be allowed to accompany the inspector during the inspection. The identity of the person supplying information to the Secretary relating to a possible violation or imminent danger or harm shall remain confidential with the Secretary if so requested by that person, unless that person elects to accompany an inspector on the inspection.

(B) The Secretary shall, by regulation, establish procedures for the review of any decision by his authorized representative not to inspect or by a refusal by such representative to ensure remedial actions are taken with respect to any alleged violation. The Secretary shall furnish such persons requesting the review a written statement of the reasons for the Secretary's final disposition of the case.

(3)(A) The Secretary shall require all operators to develop and maintain a monitoring and evaluation system which shall be capable of identifying compliance with all surface management requirements.

(B) Monitoring shall be conducted as close as technically feasible to the mineral activity or reclamation involved, and in all cases the monitoring shall be conducted within the area affected by mineral activities and reclamation.

(C) The point of compliance shall be as close to the mineral activity involved as is technically feasible, but in any event shall be located to comply with applicable State and Federal standards. In no event shall the point of compliance be outside the area affected by mineral activities and reclamation.

(D) The operator shall file reports with the Secretary on a quarterly basis on the results of the monitoring and evaluation process except that if the monitoring and evaluation show a violation of the surface management requirements, it shall be reported immediately to the Secretary.

(E) The Secretary shall determine what information must be reported by the operator pursuant to subparagraph (B). A failure to report as required by the Secretary

shall constitute a violation of this Act and subject the operator to enforcement action pursuant to this section.

(F) The Secretary shall evaluate the reports submitted pursuant to this paragraph, and based on those reports and any necessary inspection shall take enforcement action pursuant to this section.

(b) ENFORCEMENT.—(1) If the Secretary or authorized representative determines, on the basis of an inspection that an operator, or any person conducting mineral activities under section 201(b)(2), is in violation of any surface management requirement, the Secretary or authorized representative shall issue a notice of violation to the operator or person describing the violation and the corrective measures to be taken. The Secretary or authorized representative shall provide such operator or person with a reasonable period of time to abate the violation. If, upon the expiration of time provided for such abatement, the Secretary or authorized representative finds that the violation has not been abated he shall immediately order a cessation of all mineral activities or the portion thereof relevant to the violation.

(2) If the Secretary or authorized representative determines, on the basis of an inspection, that any condition or practice exists, or that an operator, or any person conducting mineral activities under section 201(b)(2), is in

violation of the surface management requirements, and such condition, practice or violation is causing, or can reasonably be expected to cause—

(A) an imminent danger to the health or safety of the public; or

(B) significant, imminent environmental harm to land, air or water resources;

the Secretary or authorized representative shall immediately order a cessation of mineral activities or the portion thereof relevant to the condition, practice or violation.

(3)(A) A cessation order by the Secretary or authorized representative pursuant to paragraphs (1) or (2) shall remain in effect until the Secretary or authorized representative determines that the condition, practice or violation has been abated, or until modified, vacated or terminated by the Secretary or authorized representative. In any such order, the Secretary or authorized representative shall determine the steps necessary to abate the violation in the most expeditious manner possible, and shall include the necessary measures in the order. The Secretary shall require appropriate financial assurances to insure that the abatement obligations are met.

(B) Any notice or order issued pursuant to paragraphs (1) or (2) may be modified, vacated or terminated by the Secretary or authorized representative. An opera-

tor, or person conducting mineral activities under section 201(b)(2), issued any such notice or order shall be entitled to a hearing on the record pursuant to subsection (f).

(4) If, after 30 days of the date of the order referred to in paragraph (3)(A) the required abatement has not occurred the Secretary shall take such alternative enforcement action against the responsible parties as will most likely bring about abatement in the most expeditious manner possible. Such alternative enforcement action shall include, but is not necessarily limited to, seeking appropriate injunctive relief to bring about abatement.

(5) In the event an operator, or person conducting mineral activities under section 201(b)(2), is unable to abate a violation or defaults on the terms of the plan of operation the Secretary shall forfeit the financial assurance for the plan of operations if necessary to ensure abatement and reclamation under this Act.

(6) The Secretary shall not forfeit the financial assurance while a review is pending pursuant to subsections (f) and (g).

(c) COMPLIANCE.—(1) The Secretary may request the Attorney General to institute a civil action for relief, including a permanent or temporary injunction or restraining order, in the district court of the United States for the district in which the mineral activities are located

whenever an operator, or person conducting mineral activities under section 201(b)(2):

(A) violates, fails or refuses to comply with any order issued by the Secretary under subsection (b); or

(B) interferes with, hinders or delays the Secretary in carrying out an inspection under subsection (a).

Such court shall have jurisdiction to provide such relief as may be appropriate. Any relief granted by the court to enforce an order under clause (A) shall continue in effect until the completion or final termination of all proceedings for review of such order under subsections (f) and (g), unless the district court granting such relief sets it aside or modifies it.

(2) Notwithstanding any other provision of law, the Secretary shall utilize enforcement personnel from the Office of Surface Mining Reclamation and Enforcement to augment personnel of the Bureau of Land Management and the Forest Service to ensure compliance with the surface management requirements, and inspection requirements of subsection (a). The Bureau of Land Management and the Forest Service shall each enter into a memorandum of understanding with the Office of Surface Mining Reclamation and Enforcement for this purpose.

(d) PENALTIES.—(1) Any operator, or person conducting mineral activities under section 201(b)(2), who fails to comply with the surface management requirements shall be liable for a penalty of not more than $5,000 per violation. Each day of continuing violation may be deemed a separate violation for purposes of penalty assessments. No civil penalty under this subsection shall be assessed until the operator charged with the violation has been given the opportunity for a hearing under subsection (f).

(2) An operator, or person conducting mineral activities under section 201(b)(2), who fails to correct a violation for which a cessation order has been issued under subsection (b) within the period permitted for its correction shall be assessed a civil penalty of not less than $1,000 per violation for each day during which such failure continues, but in no event shall such assessment exceed a 30-day period.

(3) Whenever a corporation is in violation of the surface management requirements or fails or refuses to comply with an order issued under subsection (b), any director, officer or agent of such corporation who knowingly authorized, ordered, or carried out such violation, failure or refusal shall be subject to the same penalties that may be imposed upon an operator under paragraph (1).

(e) CITIZEN SUITS.—(1) Except as provided under paragraph (2), any person having an interest which is or may be adversely affected may commence a civil action on his or her own behalf to compel compliance—

(A) against the Secretary where there is alleged a violation of any of the provisions of this Act or any regulation promulgated pursuant to this Act or terms and conditions of any plan of operations approved pursuant to this Act;

(B) against any other person alleged to be in violation of any of the provisions of this Act or any regulation promulgated pursuant to this Act or terms and conditions of any plan of operations approved pursuant to this Act;

(C) against the Secretary where there is alleged a failure of the Secretary to perform any act or duty under this Act or any regulation promulgated pursuant to this Act which is not within the discretion of the Secretary; or

(D) against the Secretary where it is alleged that the Secretary acts arbitrarily or capriciously or in a manner inconsistent with this Act or any regulation promulgated pursuant to this Act. The United States district courts shall have jurisdiction, without

regard to the amount in controversy or the citizenship of the parties.

(2) No action may be commenced except as follows:

(A) Under paragraph (1)(A) prior to 60 days after the plaintiff has given notice in writing of such alleged violation to the Secretary, or to the person alleged to be in violation; except no action may be commenced against any person alleged to be in violation if the Secretary has commenced and is diligently prosecuting a civil action in a court of the United States to require compliance with the provisions of this title (but in any such action in a court of the United States the person making the allegation may intervene as a matter of right).

(B) Under paragraph (1)(B) prior to 60 days after the plaintiff has given notice in writing of such action to the Secretary, in such manner as the Secretary shall by regulation prescribe, except that such action may be brought immediately after such notification in the case where the violation or order complained of constitutes an imminent threat to the environment or to the health or safety of the public or would immediately affect a legal interest of the plaintiff.

(3) Venue of all actions brought under this subsection shall be determined in accordance with title 28 U.S.C. 1391(a).

(4) The court, in issuing any final order in any action brought pursuant to paragraph (1) may award costs of litigation (including attorney and expert witness fees) to any party whenever the court determines such award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

(5) Nothing in this subsection shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any of the provisions of this Act and the regulations thereunder, or to seek any other relief, including relief against the Secretary.

(f) REVIEW BY SECRETARY.—(1)(A) Any operator, or person conducting mineral activities under section 201(b)(2), issued a notice of violation or cessation order under subsection (b), or any person having an interest which is or may be adversely affected by such decisions, notice or order, may apply to the Secretary for review of the notice or order within 30 days of receipt thereof, or

as the case may be, within 30 days of such notice or order being modified, vacated or terminated.

(B) Any operator, or person conducting mineral activities under section 201(b)(2), who is subject to a penalty under subsection (d) or section 105 may apply to the Secretary for review of the assessment within 30 days of notification of such penalty.

(C) Any person having an interest which is or may be adversely affected by a decision made by the Secretary under subsections (g), (h), (i), (j) and (l) of section 201, or subsection 202(a)(2), or subsection 204(g), may apply to the Secretary for review of the decision within 30 days after it is made.

(2) The Secretary shall provide an opportunity for a public hearing at the request of any party. Any hearing conducted pursuant to this subsection shall be on record and shall be subject to section 554 of title 5 of the United States Code. The filing of an application for review under this subsection shall not operate as a stay of any order or notice issued under subsection (b).

(3) Following the hearing referred to in paragraph (2), if requested, but in any event the Secretary shall make findings of fact and shall issue a written decision incorporating therein an order vacating, affirming, modifying or terminating the notice, order or decision, or with re-

spect to an assessment, the amount of penalty that is warranted. Where the application for review concerns a cessation order issued under subsection (b), the Secretary shall issue the written decision within 30 days of the receipt of the application for review, unless temporary relief has been granted by the Secretary under paragraph (4).

(4) Pending completion of any proceedings under this subsection, the applicant may file with the Secretary a written request that the Secretary grant temporary relief from any order issued under subsection (b) together with a detailed statement giving reasons for such relief. The Secretary shall expeditiously issue an order or decision granting or denying such relief. The Secretary may grant such relief under such conditions as he may prescribe only if such relief shall not adversely affect the health or safety of the public or cause significant, imminent environmental harm to land, air or water resources.

(5) The availability of review under this subsection shall not be construed to limit the operation of rights established under subsection (e).

(g) JUDICIAL REVIEW.—(1) Any action by the Secretary in promulgating regulations to implement this Act, or any other actions constituting rulemaking by the Secretary to implement this Act, shall be subject to judicial review in the United States District Court for the District

of Columbia. Any action subject to judicial review under this subsection shall be affirmed unless the court concludes that such action is arbitrary, capricious, or otherwise inconsistent with law. A petition for review of any action subject to judicial review under this subsection shall be filed in the United States District Court for the District of Columbia within 60 days from the date of such action, or after such date if the petition is based solely on grounds arising after the sixtieth day. Any such petition may be made by any person who commented or otherwise participated in the rulemaking or who may be adversely affected by the action of the Secretary.

(2) Final agency action under this Act, including such final action on those matters described under subsection (f), shall be subject to judicial review in accordance with paragraph (4) and pursuant to 28 U.S.C. 1391(a) of the United States Code on or before 60 days from the date of such final action.

(3) The availability of judicial review established in this subsection shall not be construed to limit the operations of rights established under subsection (e).

(4) The court shall hear any petition or complaint filed under this subsection solely on the record made before the Secretary. The court may affirm, vacate, or mod-

ify any order or decision or may remand the proceedings to the Secretary for such further action as it may direct.

(5) The commencement of a proceeding under this section shall not, unless specifically ordered by the court, operate as a stay of the action, order or decision of the Secretary.

(h) PROCEEDINGS.—Whenever a proceeding occurs under subsection (a), (f), or (g), or under section 201, or under section 204(g), at the request of any person, a sum equal to the aggregate amount of all costs and expenses (including attorney fees) as determined by the Secretary or the court to have been reasonably incurred by such person for or in connection with participation in such proceedings, including any judicial review of the proceeding, may be assessed against either party as the court, resulting from judicial review or the Secretary, resulting from administrative proceedings, deems proper.

SEC. 203. STATE LAW AND REGULATION.

(a) STATE LAW.—(1) Any reclamation standard or requirement in State law or regulation that meets or exceeds the requirements of subsections (m) and (n) of section 201 shall not be construed to be inconsistent with any such standard.

(2) Any bonding standard or requirement in State law or regulation that meets or exceeds the requirements

of section 201(l) shall not be construed to be inconsistent with such requirements.

(3) Any inspection standard or requirement in State law or regulation that meets or exceeds the requirements of section 202 shall not be construed to be inconsistent with such requirements.

(b) APPLICABILITY OF OTHER STATE REQUIREMENTS.—(1) Nothing in this Act shall be construed as affecting any air or water quality standard or requirement of any State law or regulation which may be applicable to mineral activities on lands subject to this Act.

(2) Nothing in this Act shall be construed as affecting in any way the right of any person to enforce or protect, under applicable law, such person's interest in water resources affected by mineral activities on lands subject to this Act.

(c) COOPERATIVE AGREEMENTS.—(1) Any State may enter into a cooperative agreement with the Secretary for the purposes of the Secretary applying such standards and requirements referred to in subsection (a) and subsection (b) to mineral activities or reclamation on lands subject to this Act.

(2) In such instances where the proposed mineral activities would affect lands not subject to this Act in addition to lands subject to this Act, in order to approve a

plan of operations the Secretary shall enter into a cooperative agreement with the State that sets forth a common regulatory framework consistent with the surface management requirements of this Act for the purposes of such plan of operations.

(3) The Secretary shall not enter into a cooperative agreement with any State under this section until after notice in the Federal Register and opportunity for public comment.

(d) PRIOR AGREEMENTS.—Any cooperative agreement or such other understanding between the Secretary and any State, or political subdivision thereof, relating to the surface management of mineral activities on lands subject to this Act that was in existence on the date of enactment of this Act may only continue in force until the effective date of this Act, after which time the terms and conditions of any such agreement or understanding shall only be applicable to plans of operations approved by the Secretary prior to the effective date of this Act except as provided under section 405.

(e) DELEGATION.—The Secretary shall not delegate to any State, or political subdivision thereof, the Secretary's authorities, duties and obligations under this Act, including with respect to any cooperative agreements entered into under this section.

SEC. 204. UNSUITABILITY REVIEW.

(a) IN GENERAL.—The Secretary of the Interior in preparing land use plans under the Federal Land Policy and Management Act of 1976, and the Secretary of Agriculture in preparing land use plans under the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976, shall each conduct a review of lands that are subject to this Act in order to determine whether there are any areas which are unsuitable for all or certain types of mineral activities pursuant to the standards set forth under subsection (e). In the event such a determination is made, the review shall be included in the applicable land use plan.

(b) SPECIFIC AREAS.—Not later than 90 days after the date of enactment of this Act, the Secretary of the Interior and the Secretary of Agriculture, on the basis of any information available, shall each publish a notice in the Federal Register identifying and listing the lands subject to this Act which are or may be determined to be unsuitable for all or certain types of mineral activities according to the standards set forth in subsection (e). After opportunity for public comment and proposals for modifications to such listing, but not later than the effective date of this Act, each Secretary shall begin to review the lands identified pursuant to this subsection to determine

whether such lands are unsuitable for all or certain types of mineral activities according to the standards set forth in subsection (e).

(c) LAND USE PLANS.—(1) At such time as the Secretary revises or amends a land use plan pursuant to provisions of law other than this Act, the Secretary shall identify lands determined to be unsuitable for all or certain types of mineral activities according to the standards set forth in subsection (e). The Secretary shall incorporate such determinations in the applicable land use plans.

(2) If lands covered by a proposed plan of operations have not been reviewed pursuant to this section at the time of submission of a plan of operations, the Secretary shall, prior to the consideration of the proposed plan of operations, review the areas that would be affected by the proposed mineral activities to determine whether the area is unsuitable for all or certain types of mineral activities according to the standards set forth in subsection (e). The Secretary shall use such review in the next revision or amendment to the applicable land use plan to the extent necessary to reflect the unsuitability of such lands for all or certain types of mineral activities according to the standards set forth in subsection (e).

(3) This section does not require land use plans to be amended until such plans are adopted, revised, or

amended pursuant to provisions of law other than this Act.

(d) EFFECT OF DETERMINATION.—(1) If the Secretary determines an area to be unsuitable under this section for all or certain types of mineral activities, he shall do one of the following:

(A) In any instance where a determination is made that an area is unsuitable for all types of mineral activities, the Secretary of the Interior, with the consent of the Secretary of Agriculture for lands under the jurisdiction of the Secretary of Agriculture, shall withdraw such area pursuant to section 204 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1714).

(B) In any instance where a determination is made that an area is unsuitable for certain types of mineral activities, the Secretary shall take appropriate steps to limit or prohibit such types of mineral activities.

(2) Nothing in this section may be construed as affecting lands where mineral activities under approved plans of operations or under notice (as provided for in the regulations of the Secretary of the Interior in effect prior to the effective date of this Act relating to operations that cause a cumulative disturbance of 5 acres or less) were

being conducted on the effective date of this Act, except as provided under subsection (g).

(3) Nothing in this section may be construed as prohibiting mineral activities not subject to paragraph (2) where substantial legal and financial commitments in such mineral activities were in existence on the effective date of this Act, but nothing in this section may be construed as limiting any existing authority of the Secretary to regulate such activities.

(4) An unsuitability determination under this section shall not prevent the types of mineral activities referred to in section 201(b)(2)(A), but nothing in this section shall be construed as authorizing such activities in areas withdrawn pursuant to section 204 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1714).

(e) REVIEW STANDARDS.—(1) An area containing lands that are subject to this Act shall be determined to be unsuitable for all or certain types of mineral activities if the Secretary determines, after notice and opportunity for public comment, that reclamation pursuant to the standards set forth in subsections (m) and (n) of section 201 would not be technologically and economically feasible for any such mineral activities in such area and where—

(A) such mineral activities would substantially impair water quality or supplies within the area sub-

ject to the mining plan or adjacent lands, such as impacts on aquifers and aquifer recharge areas;

(B) such mineral activities would occur on areas of unstable geology that could if undertaken substantially endanger life and property;

(C) such mineral activities would adversely affect publicly-owned places which are listed on or are eligible for listing on the National Register of Historic Places, unless the Secretary and the State approve all or certain mineral activities, in which case the area shall not be determined to be unsuitable for such approved mineral activities;

(D) such mineral activities would cause loss of or damage to riparian areas;

(E) such mineral activities would impair the productivity of the land subject to such mineral activities;

(F) such mineral activities would adversely affect candidate species for threatened and endangered species status; or

(G) such mineral activities would adversely affect lands designated as National Wildlife Refuges.

(2) An area may be determined to be unsuitable for all or certain mineral activities if the Secretary, after notice and opportunity for public comment, determines that

reclamation pursuant to the standards set forth in subsections (m) and (n) of section 201 would not be technologically and economically feasible for any such mineral activities in such area and where—

(A) such mineral activities could result in significant damage to important historic, cultural, scientific and aesthetic values or to natural systems;

(B) such mineral activities could adversely affect lands of outstanding aesthetic qualities and scenic Federal lands designated as Class I under section 162 of the Clean Air Act (42 U.S.C. 7401 and following);

(C) such mineral activities could adversely affect lands which are high priority habitat for migratory bird species or other important fish and wildlife species as determined by the Secretary in consultation with the Director of the Fish and Wildlife Service and the appropriate agency head for the State in which the lands are located;

(D) such mineral activities could adversely affect lands which include wetlands if mineral activities would result in loss of wetland values;

(E) such mineral activities could adversely affect National Conservation System units; or

(F) such mineral activities could adversely affect lands containing other resource values as the Secretary may consider.

(f) WITHDRAWAL REVIEW.—In conjunction with conducting an unsuitability review under this section, the Secretary shall review all administrative withdrawals of land from the location of mining claims to determine whether the revocation or modification of such withdrawal for the purpose of allowing such lands to be opened to the location of mining claims under this Act would be appropriate as a result of any of the following:

(1) The imposition of any conditions referred to in subsection (d)(1)(B).

(2) The surface management requirements of section 201.

(3) The limitation of section 107.

(g) CITIZEN PETITION.—(1) In any instance where a land use plan has not been amended or completed to reflect the review referred to in subsection (a), any person having an interest that may be adversely affected by potential mineral activities on lands subject to this Act covered by such plan shall have the right to petition the Secretary to determine such lands to be unsuitable for all or certain types of mineral activities. Such petition shall contain allegations of fact with respect to potential mineral

activities and with respect to the unsuitability of such lands for all or certain mineral activities according to the standards set forth in subsection (e) with supporting evidence that would tend to establish the allegations.

(2) Petitions received prior to the date of the submission of a proposed plan of operations under this Act, shall stay consideration of the proposed plan of operations pending review of the petition.

(3) Within 4 months after receipt of a petition to determine lands to be unsuitable for all or certain types of mining in areas where a land use plan has not been amended or completed to reflect the review referred to in subsection (a), the Secretary shall hold a public hearing on the petition in the locality of the area in question. After a petition has been filed and prior to the public hearing, any person may support or oppose the determination sought by the petition by filing written allegations of facts and supporting evidence.

(4) Within 60 days after a public hearing held pursuant to paragraph (3), the Secretary shall issue a written decision regarding the petition which shall state the reasons for granting or denying the requested determination.

(5) Reviews conducted pursuant to this subsection shall be consistent with paragraphs (3) and (4) of subsection (d) and with subsection (e).

SEC. 205. LANDS NOT OPEN TO LOCATION.

(a) LANDS.—Subject to valid existing rights, each of the following shall not be open to the location of mining claims under this Act on the date of enactment of this Act:

(1) Lands recommended for wilderness designation by the agency managing the surface, pending a final determination by the Congress of the status of such lands.

(2) Lands being managed by the Bureau of Land Management as wilderness study areas on the date of enactment of this Act except where the location of mining claims is specifically allowed to continue by the statute designating the study area, pending a final determination by the Congress of the status of such lands.

(3) Lands within Wild and Scenic River System and lands under study for inclusion in such system, pending a final determination by the Congress of the status of such lands.

(4) Lands identified by the Bureau of Land Management as Areas of Critical Environmental Concern.

(5) Lands identified by the Secretary of Agriculture as Research Natural Areas.

(6) Lands designated by the Fish and Wildlife Service as critical habitat for threatened or endangered species.

(7) Lands administered by the Fish and Wildlife Service.

(8) Lands which the Secretary shall designate for withdrawal under authority of other law, including lands which the Secretary of Agriculture may propose for withdrawal by the Secretary of the Interior under authority of other law.

(b) DEFINITION.—As used in this section, the term "valid existing rights" means that a mining claim located on lands referred to in subsection (a) was properly located and maintained under the general mining laws prior to the date of enactment of this Act, and was supported by a discovery of a valuable mineral deposit within the meaning of the general mining laws on the date of enactment of this Act, and that such claim continues to be valid.

TITLE III—ABANDONED MINERALS MINE RECLAMATION FUND

SEC. 301. ABANDONED MINERALS MINE RECLAMATION FUND.

(a) NEW SUBTITLE.—Title IV of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1231) is amended by inserting:

"Subtitle A—Abandoned Coal Mine Reclamation Fund" immediately before section 401 and by adding the following new subtitle at the end thereof:

"Subtitle B—Abandoned Minerals Mine Reclamation Fund

"SEC. 421. ABANDONED MINERALS MINE RECLAMATION.

"(a) ESTABLISHMENT.—(1) There is established on the books of the Treasury of the United States a trust fund to be known as the Abandoned Minerals Mine Reclamation Fund (hereinafter in this subtitle referred to as the 'Fund'). The Fund shall be administered by the Secretary of the Interior acting through the Director, Office of Surface Mining Reclamation and Enforcement.

"(2) The Secretary of the Interior shall notify the Secretary of the Treasury as to what portion of the Fund is not, in his judgment, required to meet current withdrawals. The Secretary of the Treasury shall invest such

drawals. The Secretary of the Treasury shall invest such portion of the Fund in public debt securities with maturities suitable for the needs of such Fund and bearing interest at rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketplace obligations of the United States of comparable maturities. The income on such investments shall be credited to, and form a part of, the Fund.

"(b) AMOUNTS.—The following amounts shall be credited to the Fund for the purposes of this Act:

"(1) All moneys received from the collection of rental fees under section 104 of the Mineral Exploration and Development Act of 1991.

"(2) Amounts collected pursuant to sections 105 and 202(d) of the Mineral Exploration and Development Act of 1991.

"(3) All moneys received from the disposal of mineral materials pursuant to section 3 of the Materials Act of 1947 (30 U.S.C. 603) to the extent such moneys are not specifically dedicated to other purposes under other authority of law.

"(4) Donations by persons, corporations, associations, and foundations for the purposes of this subtitle.

"(5) Amounts referred to in section 410(e)(1).

"SEC. 422. USE AND OBJECTIVES OF THE FUND.

"(a) IN GENERAL.—The Secretary is authorized to use moneys in the Fund for the reclamation and restoration of land and water resources adversely affected by past mineral (other than coal and fluid minerals) and mineral material mining, including but not limited to, any of the following:

"(1) Reclamation and restoration of abandoned surface mined areas.

"(2) Reclamation and restoration of abandoned milling and processing areas.

"(3) Sealing, filling, and grading abandoned deep mine entries.

"(4) Planting of land adversely affected by past mining to prevent erosion and sedimentation.

"(5) Prevention, abatement, treatment and control of water pollution created by abandoned mine drainage.

"(6) Control of surface subsidence due to abandoned deep mines.

"(7) Such expenses as may be necessary to accomplish the purposes of this subtitle.

"(b) PRIORITIES.—Expenditure of moneys from the Fund shall reflect the following priorities in the order stated:

"(1) The protection of public health, safety, general welfare and property from extreme danger from the adverse effects of past minerals and mineral materials mining practices.

"(2) The protection of public health, safety, and general welfare from the adverse effects of past minerals and mineral materials mining practices.

"(3) The restoration of land and water resources previously degraded by the adverse effects of past minerals and mineral materials mining practices.

"SEC. 423. ELIGIBLE AREAS.

"(a) ELIGIBILITY.—Lands and waters eligible for reclamation expenditures under this Act shall be those within the boundaries of States that have lands subject to the Mineral Exploration and Development Act of 1992 and the Materials Act of 1947—

"(1) which were mined or processed for minerals and mineral materials or which were affected by such mining or processing, and abandoned or left in an inadequate reclamation status prior to the date of enactment of this subtitle; and

"(2) for which the Secretary makes a determination that there is no continuing reclamation responsibility under State or Federal laws; and

"(3) for which it can be established that such lands do not contain minerals which could economically be extracted through the reprocessing or remining of such lands, unless such consideration are in conflict with the priorities set forth under paragraphs (1) and (2) of section 422(b).

In determining the eligibility under this subsection of Federal lands and waters under the jurisdiction of the Forest Service or Bureau of Land Management in lieu of the date referred to in paragraph (1), the applicable date shall be August 28, 1974, and November 26, 1980, respectively.

"(b) SPECIFIC SITES AND AREAS NOT ELIGIBLE.—The provisions of section 411(d) of the Surface Mining Control and Reclamation Act of 1977 shall apply to expenditures made from the Fund established under this subtitle in the same manner and to the same extent as such provisions apply to expenditures made under subtitle A.

"SEC. 424. FUND ALLOCATION AND EXPENDITURES.

"(a) ALLOCATIONS.—(1) Moneys available for expenditure from the Fund shall be allocated on an annual basis by the Secretary in the form of grants to eligible States, or in the form of expenditures under subsection (b), to accomplish the purposes of this subtitle.

"(2) The Secretary shall distribute moneys from the Fund based on the greatest need for such moneys pursuant to the priorities stated in section 422(b). In determining the greatest need for the distribution of moneys from the Fund to eligible States, the Secretary shall give priority to those eligible States which do not receive grants under subtitle A.

"(b) DIRECT FEDERAL EXPENDITURES.—Where a State is not eligible, or in instances where the Secretary determines that the purposes of this subtitle may best be accomplished otherwise, moneys available from the Fund may be expended directly by the Director, Office of Surface Mining Reclamation and Enforcement. The director may also make such money available through grants made to the Director of the Bureau of Land Management, the Chief of the United States Forest Service, the Director of the National Park Service, and any public entity that volunteers to develop and implement, and that has the ability to carry out, all or a significant portion of a reclamation program, or through cooperative agreements between eligible States and the entities referred to in this subsection.

"SEC. 425. STATE RECLAMATION PROGRAMS.

"(a) ELIGIBLE STATES.—For the purpose of section 424(a), 'eligible States' are those States for which the Sec-

retary determines meets each of the following requirements:

"(1) Within the State there are mined lands, waters, and facilities eligible for reclamation pursuant to section 423.

"(2) The State has developed an inventory of such areas following the priorities established under section 422(b).

"(3) The State has established, and the Secretary has approved, a State abandoned minerals and mineral materials mine reclamation program for the purpose of receiving and administering grants under this subtitle. Any State with an approved abandoned mine reclamation program pursuant to section 405 shall be deemed to have met the requirements of this paragraph.

"(b) MONITORING.—The Secretary shall monitor the expenditure of State grants to ensure they are being utilized to accomplish the purposes of this subtitle.

"(c) SUPPLEMENTAL GRANTS.—In the case of any State with an approved abandoned mine reclamation program pursuant to section 405, grants to such State made pursuant to this subtitle may be made as a supplement to grants received by such State pursuant to section 402(g)(1).

"(d) STATE PROGRAMS.—(1) The Secretary shall approve any State abandoned minerals mine reclamation program submitted to the Secretary by a State under this subtitle if the Secretary finds that the State has the ability and necessary State legislation to implement such program and that the program complies with the provisions of this subtitle and the regulations of the Secretary under this subtitle.

"(2) No State, or a contractor for such State engaged in approved reclamation work under this subtitle, or a public entity referred to in section 424(b), shall be liable under any provision of Federal law for any costs or damages as a result of action taken or omitted in the course of carrying out an approved State abandoned minerals mine reclamation program under this section. This paragraph shall not preclude liability for cost or damages as a result of gross negligence or intentional misconduct by the State. For purposes of the preceding sentence, reckless, willful, or wanton misconduct shall constitute gross negligence.

"SEC. 426. AUTHORIZATION OF APPROPRIATIONS.

"Amounts credited to the Fund are authorized to be appropriated for the purpose of this subtitle without fiscal year limitation.".

SEC. 302. CONFORMING AMENDMENTS.

(a) CONFORMING CHANGE.—All references to "this title" in sections 401 through 414 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1231 and following) are amended to read "this subtitle".

(b) TABLE OF CONTENTS.—The table of contents for title IV of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1231 and following) is amended as follows:

(1) Insert the following immediately before the item relating to section 401:

"Subtitle A—Abandoned Coal Mine Reclamation Fund".

(2) Add the following at the end thereof:

"Subtitle B—Abandoned Minerals Mine Reclamation Fund

"Sec. 421. Abandoned minerals mine reclamation.
"Sec. 422. Use and objectives of the fund.
"Sec. 423. Eligible areas.
"Sec. 424. Fund allocation and expenditures.
"Sec. 425. State reclamation programs.
"Sec. 426. Authorization of appropriations.".

TITLE IV—ADMINISTRATIVE AND MISCELLANEOUS PROVISIONS

SEC. 401. POLICY FUNCTIONS.

(a) MINERALS POLICY.—The Mining and Minerals Policy Act of 1970 (30 U.S.C. 21a) is amended by adding at the end thereof the following: "It shall also be the responsibility of the Secretary of Agriculture to carry out the policy provisions of paragraphs (1) and (2) of this Act.".

(b) MINERAL DATA.—Section 5(e)(3) of the National Materials and Minerals Policy, Research and Development Act of 1980 (30 U.S.C. 1604) is amended by inserting before the period the following: ", except that for National Forest System lands the Secretary of Agriculture shall promptly initiate actions to improve the availability and analysis of mineral data in Federal land use decision making".

SEC. 402. USER FEES.

The Secretaries of Interior and Agriculture are authorized to establish and collect from persons subject to the requirements of this Act such user fees as may be necessary to reimburse the United States for a portion of the expenses incurred in administering such requirements. Fees may be assessed and collected under this section only in such manner as may reasonably be expected to result in an aggregate amount of the fees collected during any fiscal year which does not exceed the aggregate amount of administrative expenses referred to in this section.

SEC. 403. REGULATIONS; EFFECTIVE DATES.

(a) EFFECTIVE DATE.—This Act shall take effect 1 year after the date of enactment of this Act, except as otherwise provided in this Act.

(b) REGULATIONS.—(1) The Secretary of the Interior shall issue final regulations to implement title I, such re-

quirements of section 402 and 409 as may be applicable to such title, title III and sections 404, 406 and 407 not later than the effective date of this Act specified in subsection (a).

(2) The Secretary of the Interior and the Secretary of Agriculture shall each issue final regulations to implement their respective responsibilities under title II, such requirements of section 402 as may be applicable to such title, and sections 405 and 409 not later than the effective date of this Act referred to in subsection (a). The Secretary of the Interior and the Secretary of Agriculture shall coordinate the promulgation of such regulations.

(3) Failure to promulgate the regulations specified in this subsection by the effective date of this Act by reason of any appeal or judicial review shall not delay the effective date of this Act as specified in subsection (a).

(b) NOTICE.—Within 60 days after the publication of regulations referred to in subsection (b)(1), the Secretary of the Interior shall give notice to holders of mining claims and mill sites maintained under the general mining laws as to the requirements of section 404. Procedures for providing such notice shall be established as part of the regulations.

(c) NEW MINING CLAIMS.—Notwithstanding any other provision of law, after the effective date of this Act,

a mining claim for a locatable mineral on lands subject to this Act—

(1) may be located only in accordance with this Act,

(2) may be maintained only as provided in this Act, and

(3) shall be subject to the requirements of this Act.

SEC. 404. TRANSITIONAL RULES; MINING CLAIMS AND MILL SITES.

(a) CLAIMS UNDER THE GENERAL MINING LAWS.—

(1) CONVERTED MINING CLAIMS.—Notwithstanding any other provision of law, within the 3-year period after the effective date of this Act, the holder of any unpatented mining claim which was located under the general mining laws before the effective date of this Act may elect to convert the claim under this paragraph by filing an election to do so with the Secretary of the Interior that references the Bureau of Land Management serial number of that claim in the office designated by such Secretary. The provisions of title I (other than subsections (a), (b), (c), (d)(1), (f), and (h) of section 103) shall apply to any such claim, effective upon the making of such election, and the filing of

such election shall constitute notice to the Secretary for purposes of section 103(d)(2). Once a mining claim has been converted, there shall be no distinction made as to whether such claim was originally located as a lode or placer claim.

(2) UNCONVERTED MINING CLAIMS.—Notwithstanding any other provision of law, any claim referred to in paragraph (1) that has not converted within the 3-year period referred to in such paragraph shall be deemed forfeited and declared null and void.

(3) CONVERTED MILL SITE CLAIMS.—Notwithstanding any other provision of law, within the 3-year period after the effective date of this Act, the holder of any unpatented mill site which was located under the general mining laws before the effective date of this Act may elect to convert the site under this paragraph by filing an election to do so with the Secretary of the Interior that references the Bureau of Land Management serial number of that mill site in the office designated by such Secretary. The provisions of title I (other than subsections (a), (b), (c), (d)(1), and (f) of section 103) shall apply to any such claim, effective upon the making of such election, and the filing of such election shall constitute

notice to the Secretary for purposes of section 103(d)(2). A mill site converted under this paragraph shall be deemed a mining claim under this Act.

(4) UNCONVERTED MILL SITE CLAIMS.—Notwithstanding any other provision of law, any mill site referred to in paragraph (3) that has not converted within the 3-year period referred to in such paragraph shall be deemed forfeited and declared null and void.

(5) TUNNEL SITES.—Any tunnel site located under the general mining laws on or before the effective date of this Act shall not be recognized as valid unless converted pursuant to paragraph (1). No tunnel sites may be located under the general mining laws after the effective date of this Act.

(b) SPECIAL APPLICATION OF REQUIREMENTS.—For mining claims and mill sites converted under this section each of the following shall apply:

(1) For the purposes of complying with the requirements of section 103(d)(2), whenever the Secretary receives an election under paragraphs (1) or (3) of subsection (a), as the case may be, he shall provide the certificate referenced in section

103(d)(2) to the holder of the mining claim or mill site.

(2) The first diligence year applicable to mining claims and mill sites converted under this section shall commence on the first day of the first month following the date the holder of such claim or mill site files an election to convert with the Secretary under paragraphs (1) or (3) of subsection (a), as the case may be, and subsequent diligence years shall commence on the first day of that month each year thereafter.

(3) For the purposes of determining the boundaries of a mining claim to which the rental requirements of section 104 apply for a mining claim or mill site converted under this section, the rental fee shall be paid on the basis of land within the boundaries of the converted mining claim or mill site as described in the notice of location or certificate of location filed under section 314 of the Federal Land Policy and Management Act of 1976.

(c) PRECONVERSION.—Any unpatented mining claim or mill site located under the general mining laws shall be deemed to be a prior claim for the purposes of section 103(e) during the 3-year period referred to in subsections (a)(1) or (a)(3).

(d) POSTCONVERSION.—Any unpatented mining claim or mill site located under the general mining laws shall be deemed to be a prior claim for the purposes of section 103(e) if converted pursuant to subsections (a)(1) or (a)(3).

(e) DISPOSITION OF LAND.—In the event a mining claim is located under this Act for lands encumbered by a prior mining claim or mill site located under the general mining laws, such lands shall become part of the claim located under this Act if the claim or mill site located under the general mining laws is declared null and void under this section or otherwise becomes null and void thereafter.

(f) PREACT CONFLICTS.—(1) Any conflicts in existence on or before the date of enactment of this Act between holders of mining claims located under the general mining laws may be resolved in accordance with applicable laws governing such conflicts in effect on the date of enactment of this Act in a court with proper jurisdiction.

(2) Any conflicts not relating to matters provided for under section 103(g) between the holders of a mining claim located under this Act and a mining claim or mill located under the general mining laws arising either before or after the conversion of any such claim or site under

this section shall be resolved in a court with proper jurisdiction.

SEC. 405. TRANSITIONAL RULES; SURFACE MANAGEMENT REQUIREMENTS.

(a) NEW CLAIMS.—Notwithstanding any other provision of law, any mining claim for a locatable mineral on lands subject to this Act located after the date of enactment of this Act, but prior to the effective date of this Act, shall be subject to such surface management requirements as may be applicable to the mining claim in effect prior to the date of enactment of this Act until the effective date of this Act, at which time such claim shall be subject to the requirements of title II.

(b) PREEXISTING CLAIMS.—Notwithstanding any other provision of law, any unpatented mining claim or mill site located under the general mining laws shall be subject to the requirements of title II as follows:

(1) In the event a plan of operations had not been approved for mineral activities on any such claim or site prior to the effective date of this Act, the claim or site shall be subject to the requirements of title II upon the effective date of this Act.

(2) In the event a plan of operations had been approved for mineral activities on any such claim or site prior to the effective date of this Act, such plan

of operations shall continue in force for a period of 5 years after the effective date of this Act, after which time the requirements of title II shall apply, except as provided under subsection (c), subject to the limitations of section 204(d)(2). In order to meet the requirements of section 201, the person conducting mineral activities under such plan of operations shall apply for a modification under section 201(i). During such 5-year period the provisions of section 202 shall apply on the basis of the surface management requirements applicable to such plans of operations prior to the effective date of this Act.

(3) In the event a notice had been filed with the authorized officer in the applicable district office of the Bureau of Land Management (as provided for in the regulations of the Secretary of the Interior in effect prior to the date of enactment of this Act relating to operations that cause a cumulative disturbance of 5 acres or less) prior to the date of enactment of this Act, mineral activities may continue under such notice for a period of 2 years after the effective date of this Act, after which time the requirements of title II shall apply, except as provided under subsection (c), subject to the limitations of section 204(d)(2). In order to meet the requirements

of section 201, the person conducting mineral activities under such notice must apply for a modification under section 201(i) unless such mineral activities are conducted pursuant to section 201(b)(2). During such 2-year period the provisions of section 202 shall apply on the basis of the surface management requirements applicable to such notices prior to the effective date of this Act.

(4) In the event a notice (as described in paragraph (3)) had not been filed with the authorized officer in the applicable district office of the Bureau of Land Management prior to the date of enactment of this Act, the claim or site shall be subject to the surface management requirements in effect prior to the effective date of this Act at which time such claims shall be subject to the requirements of title II.

SEC. 406. BASIS FOR CONTEST.

(a) DISCOVERY.—(1) After the effective date of this Act, a mining claim may not be contested or challenged on the basis of discovery under the general mining laws, except as follows:

(A) Any claim located on or before the effective date of this Act may be contested by the United States on the basis of discovery under the general

mining laws as in effect prior to the effective date of this Act if such claim is located within units of the National Park System, National Wildlife Refuge System, National Wilderness Preservation System, Wild and Scenic Rivers System, National Trails System, or National Recreation Areas designated by an Act of Congress, or within an area referred to in section 205 pending a final determination referenced in such section.

(B) Any mining claim located on or before the effective date of this Act may be contested by the United States on the basis of discovery under the general mining laws as in effect prior to the effective date of this Act if such claim was located for a mineral material that purportedly has a property giving it distinct and special value within the meaning of section 3(a) of the Act of July 23, 1955, or if such claim was located for a mineral that was not locatable under the general mining laws on or before the effective date of this Act.

(2) The Secretary of the Interior or the Secretary of Agriculture, as the case may be, may initiate contest proceedings against those mining claims referred to in paragraph (1) at any time, except that nothing in this subsection may be construed as requiring the Secretary to in-

quire into or contest the validity of a mining claim for the purpose of the conversion referred to in section 404.

(3) Nothing in this subsection may be construed as limiting any contest proceedings initiated by the United States under this subsection on issues other than discovery.

SEC. 407. SAVINGS CLAUSE CLAIMS.

(a) Notwithstanding any other provision of law, except as provided under subsection (b), an unpatented mining claim referred to in section 37 of the Mineral Leasing Act (30 U.S.C. 193) may not be converted under section 404 until the Secretary of the Interior determines the claim was valid on the date of enactment of the Mineral Leasing Act and has been maintained in compliance with the general mining laws.

(b) Immediately after the date of enactment of this Act, the Secretary of the Interior shall initiate contest proceedings challenging the validity of all unpatented claims referred to in subsection (a), including those claims for which a patent application has not been filed. If a claim is determined to be invalid, the Secretary shall promptly declare the claim to be null and void.

(c) No claim referred to in subsection (a) shall be declared null and void under section 404 during the period such claim is subject to a proceeding under subsection (b).

If, as a result of such proceeding, a claim is determined valid, the holder of such claim may comply with the requirements of section 404(a)(1), except that the 3-year period referred to in such section shall commence with the date of the completion of the contest proceeding.

SEC. 408. SEVERABILITY.

If any provision of this Act or the applicability thereof to any person or circumstances is held invalid, the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected thereby.

SEC. 409. PURCHASING POWER ADJUSTMENT.

The Secretary shall adjust all rental rates, penalty amounts, and other dollar amounts established in this Act for changes in the purchasing power of the dollar every 10 years following the date of enactment of this Act, employing the Consumer Price Index for all-urban consumers published by the Department of Labor as the basis for adjustment, and rounding according to the adjustment process of conditions of the Federal Civil Penalties Inflation Adjustment Act of 1990 (104 Stat. 890).

SEC. 410. ROYALTY.

(a) RESERVATION OF ROYALTY.—Production of locatable minerals (including associated minerals) from any mining claim located or converted under this Act, or

mineral concentrates derived from locatable minerals produced from any mining claim located or converted under this Act, as the case may be, shall be subject to a royalty of not less than 8 percent of the gross income from the production of such locatable minerals or concentrates, as the case may be.

(b) ROYALTY PAYMENTS.—Royalty payments shall be made to the United States not later than 30 days after the end of the month in which the product is produced and placed in its first marketable condition, consistent with prevailing practices in the industry.

(c) REPORTING REQUIREMENTS.—All persons holding claims under this Act shall be required to provide such information as determined necessary by the Secretary to ensure compliance with this section, including, but not limited to, quarterly reports, records, documents, and other data. Such reports may also include, but not be limited to, pertinent technical and financial data relating to the quantity, quality, and amount of all minerals extracted from the mining claim.

(d) AUDITS.—The Secretary is authorized to conduct such audits of all persons holding claims under this Act as he deems necessary for the purposes of ensuring compliance with the requirements of this section.

(e) DISPOSITION OF RECEIPTS.—All receipts from royalties collected pursuant to this section shall be distributed as follows—

(1) 50 percent shall be deposited into the Fund referred to in title III;

(2) 25 percent collected in any State shall be paid to the State in the same manner as are payments to States under section 35 of the Mineral Leasing Act; and

(3) 25 percent shall be deposited into the Treasury of the United States.

(f) COMPLIANCE.—Any person holding claims under this Act who knowingly or willfully prepares, maintains, or submits false, inaccurate, or misleading information required by this section, or fails or refuses to submit such information, shall be subject to the enforcement provisions of section 202 of this Act and forfeiture of the claim.

(g) REGULATIONS.—The Secretary shall promulgate regulations to establish gross income for royalty purposes under subsection (a) and to ensure compliance with this section.

(h) REPORT.—The Secretary shall submit to the Congress an annual report on the implementation of this section. The information to be included in the report shall include, but not be limited to, aggregate and State-by-

State production data, and projections of mid-term and long-term hard rock mineral production and trends on public lands.

SEC. 411. SAVINGS CLAUSE.

(a) SPECIAL APPLICATION OF MINING LAWS.—Nothing in this Act shall be construed as repealing or modifying any Federal law, regulation, order or land use plan, in effect prior to the effective date of this Act that prohibits or restricts the application of the general mining laws, including such laws that provide for special management criteria for operations under the general mining laws as in effect prior to the effective date of this Act, to the extent such laws provide environmental protection greater than required under this title.

(b) OTHER FEDERAL LAWS.—Nothing in this Act shall be construed as superseding, modifying, amending or repealing any provision of Federal law not expressly superseded, modified, amended or repealed by this Act, including but not necessarily limited to, all of the following laws—

(1) the Clean Water Act (33 U.S.C. 1251 and following);

(2) the Clean Air Act (42 U.S.C. 7401 and following);

(3) title IX of the Public Health Service Act (the Safe Drinking Water Act (42 U.S.C. 300f and following));

(4) the Endangered Species Act of 1973 (16 U.S.C. 1531 and following);

(5) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 and following);

(6) the Atomic Energy Act of 1954 (42 U.S.C. 2011 and following);

(7) the Uranium Mill Tailings Radiation Control Act (42 U.S.C. 7901 to 7942);

(8) the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801 and following);

(9) the Solid Waste Disposal Act (42 U.S.C. 6901 and following);

(10) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 and following);

(11) the Act commonly known as the False Claims Act (31 U.S.C. 3729 to 3731);

(12) the National Historic Preservation Act (16 U.S.C. 470 and following);

(13) the Migratory Bird Treaty Act (16 U.S.C. 706 and following); and

(14) the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976.

(c) PROTECTION OF CONSERVATION AREAS.—In order to protect the resources and values of Denali National Park and Preserve, and all other National Conservation System units, the Secretary of the Interior or other appropriate Secretary shall utilize authority under this Act and other applicable law to the fullest extent necessary to prevent mineral activities within the boundaries of such units that could have an adverse impact on the resources or values of such units.

SEC. 412. AVAILABILITY OF PUBLIC RECORDS.

Copies of records, reports, inspection materials or information obtained by the Secretary under this Act shall be made immediately available to the public, consistent with section 552 of title 5 of the United States Code, in central and sufficient locations in the county, multicounty, and State area of mineral activity or reclamation so that such items are conveniently available to residents in the area proposed or approved for mineral activities or reclamation.

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Mr. LEHMAN. At the outset this morning, I would like to commend my colleague, who just came through the door, and note for the record the leadership and perseverance that Congressman Rahall has shown over the last several years in bringing Mining Law reform to our attention. Nick began looking into the question of reform shortly after he assumed the chairmanship of the Mining and Natural Resources Subcommittee in 1985. He has stuck with the issue in the face of tremendous resistance and at times outright hostility from many in the industry. Coming from probably *the* coal mining district in America, Nick certainly cannot be accused of not caring about mining, but being a fair-minded person, he recognized that the current system no longer serves either the public or the industry well.

H.R. 322 offers this Congress the opportunity to act clearly and decisively in the national interest. Our position on this bill will be understood by taxpaying Americans for what it is, common-sense caretaking that requires a fair return for the extraction of minerals which belong to all Americans. Further, H.R. 322 will be understood as providing much needed environmental safeguards.

I look forward to a lively debate today which takes into account fiscal realities and mining practices as we consider rewriting a century-old law to conform with modern-day needs and values. I want all parties to know from the outset that the subcommittee is eager for constructive input and possible suggestions for change in the legislation. We want to make sure it is both workable and reasonable. In that regard, my door is open and our staff is always available.

Those who have legitimate problems and concerns can only be effective it they attempt to be part of the process in this House. Doing nothing about Mining Law reform, however, is not an option. Developing a comprehensive revision that takes into account current values, technologies, and physical realities is the path we will take. We are at the point where decisions made are going to be reflected in Federal law, and I believe the presence of the Secretary, Mr. Babbitt, here this morning underscores that fact.

So, again, the process is open now. We look forward to input from everyone who has a concern. We are going to try to do what we can to be as fair as possible.

[Prepared statement of Mr. Lehman follows:]

OPENING STATEMENT OF RICHARD H. LEHMAN, Chairman
Subcommittee on Energy and Mineral Resources Subcommittee
Hearing on H. R. 322
"The Mineral Exploration and Development Act of 1993"
Thursday, March 11, 1993

The Subcommittee on Energy and Mineral Resources will come to order. Today we will begin consideration of H.R. 322, "The Mineral Exploration and Development Act of 1993" introduced by our colleague, Nick Rahall.

H.R. 322 would replace certain anachronistic provisions of the Mining Law of 1872 and provide a more suitable regime to govern mining on public lands for "hardrock" minerals such as gold, silver, copper and platinum.

The major issues involved in the reform effort are receipt of a fair return to the federal treasury for valuable public mineral resources, environmental protection, elimination of archaic requirements and reclamation of abandoned hardrock mines in the west.

Legislation to reform the 121-year law was introduced in the 101st and 102nd Congresses by our colleague Nick Rahall of West Virginia. Early in the 101st Congress, Nick Rahall introduced H.R. 918, the predecessor to H.R. 32 and six hearings were conducted on the bill. It was reported favorably by the Committee and referred to the Agriculture and Merchant Marine Committees. The House began floor consideration of the bill, but did not complete action on the measure prior to adjournment last fall.

At the outset, I would like to note for the record, the leadership and perseverance Nick has shown over the last several years in bringing mining law reform to our attention. Nick began looking into the question of reform shortly after he assumed the chairmanship of the Mining and Natural Resources Subcommittee in 1987. And he has stuck with the issue in the face of tremendous resistance and, at times, outright hostility from the hard rock mining industry. Coming from THE coal mining district, Nick cannot be accused of not caring about mining. But, being a fair-minded man, he has recognized the truth in what Lewis Mumford said in his book, Technics and Civilization: "One must admit the devastation of mining even if one is prepared to justify the end."

H.R. 322 offers this Congress the opportunity to act clearly and decisively in the national interest. Our positive action on H.R. 322 will be understood by tax paying Americans for what it is---honest stewardship of the public lands. Common sense stewardship that requires a fair return from the extraction for sale of minerals which, in the words of a witness from the American Mining Congress, "belong to all Americans."

Further, H.R. 322 will be understood as providing needed environmental safeguards, which under the current regime are woefully lacking.

Today, modern machinery can do in hours what it took men and draft animals years to do in the past. Gold mining requires the processing of large amounts of material since the metal occurs in concentrations best measured in parts per million. An estimated 620 million tons of waste are produced in gold mining each year. The Goldstrike mine in Nevada, moves 325,00 tons of ore and waste to produce 50 kilograms of gold each day. Yet, most mining wastes are not covered by the hazardous waste provisions of RCRA. And, the Clean Water Act does not provide protections against groundwater contamination from mining.

Nor was the Mining Law of 1872 intended to address these kinds of concerns that many people today have about the wisdom of mining. The Mining Law was not intended to ask the question -- "Should mining occur in this location?" and because of the so-called "right-to-mine" which industry enthusiasts champion, mining can occur in an environmentally sensitive or archaeologically significant locale without the most fundamental question being asked -- "What is the highest and best use of this land?"

H. R. 322 seeks to address these and other concerns. I look forward to hearing the testimony of our witnesses today.

Mr. LEHMAN. At this time I would like to recognize for an opening statement the distinguished ranking member of this committee, the gentlelady from Nevada, Mrs. Vucanovich.

STATEMENT OF HON. BARBARA F. VUCANOVICH

Mrs. VUCANOVICH. Thank you very much, and I appreciate your scheduling a hearing on an issue of such importance to my home State and my district, and that is whether or not there ought to be hard-rock mining allowed on the public lands.

As you know, I have been fighting this battle with the former subcommittee chairman for several Congresses. Thus, it won't come as a shock that I firmly believe the bill before us would eliminate a significant portion of the rural West's economy.

It may surprise you to hear me say, however, that the time has come for addressing meaningful reform of the Mining Law so that we can move beyond the uncertainty brought about by the never ending rhetoric of "fair return to the public" and "lack of environmental standards" under current law.

Am I abandoning my constituents? No. I simply believe the time has come to force oneself to the table and put these ghosts to rest. If we do it right, we can have a viable mining industry *and* answer legitimate fiscal and environmental concerns.

Is H.R. 322 such a bill? I don't think so. Its short title is "The Mineral Exploration and Development Act of 1993," but I can't stress too much what a misnomer that is unless, of course, we are talking about some other nation's mineral development. I think that we all know that investors in search of hard-rock mining opportunities have a worldwide market in which to seek the best return on their money.

This Congress, try though we may, cannot repeal laws of supply and demand. Society is not ready to give up its use of metals and nonmetallic minerals. If public lands of the western United States are made uneconomic to prospect, the smart money will go elsewhere—and take tens of thousands of the best-paying jobs in my State and many others with it.

The flight of domestic exploration dollars to Latin America, the C.I.S. nations, the Pacific Rim, and elsewhere has already begun. Are the Rahall and Bumpers bills the sole cause of this exodus? Of course not. There are many reasons for not investing in our Nation's natural resource industries, but H.R. 322 and S. 257 would be the last straw for public land prospecting.

Now I know the sponsors of this bill plead good intentions to promote "responsible mineral development," as one of today's witnesses chooses to subtitle his publication, but, as they say, "the devil is in the details," and my friends this bill is one heck of a disincentive to mining in Nevada.

If it is "responsible" public policy to say, "Thou shalt not explore, develop, or produce hard-rock minerals from public lands and adjacent private lands," regardless of compliance with existing Federal and State environmental laws, then I guess H.R. 322 is indeed a good bill. But if you believe, as I do, that mining is a legitimate use of our public resources and that it is *irresponsible* to chase off the environmentally sound producers to get at a few bad actors, then you will agree that H.R. 322 is a bad bill.

Allow me just a few moments more, Mr. Chairman, to elaborate on this theme. Our President ran on a platform that was anchored by the slogan, "It's the economy, stupid." The voters agreed, but now we just wonder who got the message. Mining jobs in Nevada directly employ some 14,000 people in my district and indirectly another 40,000 or more. Nevada labor statistics show mining is the highest paid job sector in our economy. These are *real* jobs, not Government "make-work" jobs needing our economic stimulus package to happen. Mining jobs are *real* jobs that will flow to Mexico, Chile, and Bolivia, where mining investment is welcomed with open arms.

Oh, sure, a few of my constituents, the Spanish-speaking geologist or the mining engineer, will find work in these nations and send home a paycheck to Winnemucca, Elko, or Reno to feed the family she left behind, but the vast majority of miners will simply be out of work.

That leads me to comment upon the advance testimony of two of today's witnesses. They would have us believe that something is greatly amiss in the action of American Barrick Resources attempting to patent its Goldstrike mine on the Carlin Trend in Nevada. Mr. Chairman, may I relate the true story of this mine?

The good citizens of Elko and vicinity are very happy to have Barrick as a neighbor. This is a deposit that another major company took a pass on. It was Barrick that risked a billion dollars in an unproven technology to recover gold from sulfide-bearing rock that was formerly worthless. In the process, Barrick has created 1,300 high-tech jobs of twice the average wage in Nevada, underwritten construction of houses and apartments, contributed millions of dollars to schools and environmental projects, provided comprehensive health care coverage, and has even guaranteed college tuition costs to the children of its full-time employees!

This sounds like the very programs that the President is attempting to establish nationwide, yet Barrick is being held up as an example of lost revenues to the Treasury because of delayed Mining Law reform. Can anyone truly blame them for seeking patent in the face of bills that would bar mining on unpatented ground?

I have invited President Clinton to come to Elko and visit with my constituents, as he did with Boeing workers in Seattle facing lay-offs. If and when he does—and my understanding is that the White House scheduling people have called to decline my invitation—the President will hear it from us: "Mining, It Works for Nevada." Don't send our jobs to Latin America. It doesn't have to happen. It is not foreign competition driving a noncompetitive industry out of business.

Our domestic mining industry is the envy of the world. Our exploration people skillfully employ the latest scientific gadgets and theories to find ore, and our engineers and miners extract it in the most environmentally conscious manner possible and reclaim the lands to higher standards than are required anywhere else. Yet, despite this record, there are many who would rather see mining occur in less regulated places than our public lands.

The old saw "the public isn't getting its share of the resource" will be trotted out again today for sure. How does $130 million an-

nually in Federal taxes for just the gold mining industry alone sound?

Mr. Chairman, I am not going to take the time now to expound upon gross royalties; we have a distinguished witness to tell us those facts. But I must say, the President's proposal to take 12.5 percent of one's production right off the top without respect to profit margins is a formula to lose jobs for sure. I never thought I would say this, but it makes this bill's 8 percent royalty look moderate!

But, believe me, it is not moderate enough, and taken with the "Just Say No" provision of Title II of H.R. 322, a gross royalty of anything like that magnitude is a recipe for flight of capital to safer havens.

Perhaps I sound too much like an apologist for the miners, but in large measure Nevada is where the action is today. My aim is to keep those jobs and grow some more. However, having said that, I do recognize there are areas of mutual concern to the environmental community and industry. My understanding is, the mining industry, from small miners and prospectors through large international companies, have largely agreed on reforms that would provide a rental and net proceeds royalty stream to the Treasury, provide for reclamation standards and application of all environmental laws, require full permitting and bonding of all operators, and establish an abandoned mine land program to reclaim past abandoned hard-rock and placer mines on public lands similar to the fund for coal lands.

Further, the proposal would bar new claims for certain low-valued commodities such as sand, gravel, pumice, and building stone. Lastly, patent would issue only upon payment of fair market value for the surface estate, and the U.S. Government would retain a net proceeds royalty interest in production in perpetuity. These are reforms I can and will support. They are fair, but not a confiscation of rights that would kill our domestic industry.

What is lacking in that proposed bill, of course, is the absolute discretion granted to the government land manager in H.R. 322 to deny any and all permits. I recognize the need to enforce existing laws, but I still do not agree with the notion that someone's perception of ugliness is reason enough to deny mining. Unless and until we pass the Federal Viewshed Protection Act, we ought not to hand over this authority to our BLM and Forest Service managers. Congress has shown more than enough willingness to tackle withdrawals on its own; let's leave it that way.

With that, Mr. Chairman, I would like to welcome all of our witnesses today, especially Dr. John Dobra of the University of Nevada, Department of Economics and the Natural Resources Institute. John is our lecturer today on this "dismal science." I suggest we take notes. There may be a quiz at markup time.

I would like also to welcome Mr. Russ Fields of the Nevada Department of Minerals speaking on behalf of our Governor Bob Miller, who is unable to be here with us today. Welcome, also to Secretary Babbitt, former geologist and Governor of the largest copper-producing State in the Nation.

Thank you, Mr. Chairman.

Mr. LEHMAN. Thank you.

At this time I will recognize the chairman of the full committee, Mr. Miller.

STATEMENT OF HON. GEORGE MILLER

Mr. MILLER. Thank you, Mr. Chairman.

I have no opening statement. I just want to commend Congressman Rahall for all the work on this legislation over the last several years and to the subcommittee members for all of the work that they have put in, and to you, Mr. Chairman, for bringing this bill right to the forefront, and to welcome the Secretary and other witnesses.

Mr. LEHMAN. Thank you.

Mr. Thomas.

STATEMENT OF HON. CRAIG THOMAS

Mr. THOMAS. Thank you, Mr. Chairman.

I, first of all, need to discuss with you a little bit about "the coal-producing district in this Nation." Wyoming, I think you will find, is the greatest producer.

Mr. LEHMAN. You mean what Nick told me wasn't true?

Mr. THOMAS. I can't imagine such a thing. [Laughter.]

In any event, welcome, Mr. Secretary.

I am pleased that we are having this hearing. We have been down this road before, of course, and we will hear many of the same things.

Let me just depart a bit to remind you all that those of us from the West and the public land States will be looking at this in the context of several other things: grazing fee increases, timber sale cost increases, mineral royalty changes, reclamation water increases, wool program reduction's, Btu taxes, recreational fee increases. There is a whole series of things that all impact on public land States. Certainly people in Wyoming take a look at that whole package of things and how they are affected.

In any event, the Mining Law has been talked about and needs to be talked about. There are some who will say it has been the thing that has brought about development in the West, and certainly it has. There are others who will say that it has been a disaster in some environmental aspects, and that too is probably somewhat true. So there is great merit on both sides of this, and there do need to be some changes.

The notion that it is an antiquated law that has never been touched since 1872, of course, simply isn't the case. Nevertheless, we do need to look at it.

I hope we can look at it in terms of what our goals are, what is it we want to have had accomplished once having made changes. The goal of some, of course, is to keep people off public lands with commodity uses; I suppose that is a goal for someone. Certainly the major goal will be to best use these public resources in a way that is environmentally sound.

Too often, I am afraid, Government decisions, congressional decisions, rest on more immediate concerns rather than accomplishing an overall goal, which most of us would agree to in the broad sense.

So I hope that that purpose is before us, and Mr. Secretary, I appreciate your being here, along with the other witnesses, and I

hope that all of us can try to come together to come up with something that is good for the States, good for the people who live there, and good for the land and the country.

Thank you, Mr. Chairman.

Mr. LEHMAN. Thank you.

Mr. Rahall.

STATEMENT OF HON. NICK J. RAHALL, II

Mr. RAHALL. Thank you, Mr. Chairman.

I first want to thank you for the kind words in your opening statement as well as thank our full committee chairman, Mr. Miller, for his kind words, and commend you for proceeding so quickly in having these hearings on Mining Law reform. And, yes, I even want to thank the gentlelady from Nevada for her kind words as well because I have enjoyed working with her over the years and it has been years and years—that we have done extensive work on this issue.

I also want to welcome Secretary Babbitt once again to this forum, or at least for the first time to this subcommittee, and tell him how refreshing it is in these days in Washington to feel a fresh wind blowing across the Mining Law reform landscape.

We have heard from this administration a clear statement of support for comprehensive Mining Law reform. We, who have labored so long in the trenches, are finding ourselves rubbing our eyes, Mr. Secretary; in astonishment, we are rubbing our eyes. We almost cannot believe our ears because for so long we have been subjected to the utterings of luminaries of the nature of Watt and Hodel, and I guess we could go on and list several others.

But the wind brings a message of hope, brings a message of compassion, for those who live in communities that are suffering from the past ravages of hard-rock mining whose landscapes are maimed, whose streams run shades of red and orange. Blown along by this wind is a message to the American people that we, who serve as the stewards of the land in which they hold title, will not condone its abuse, nor will we fail to ensure that they are given a fair return for its use. That is what this debate is about.

As you listen closely, I am sure, Mr. Secretary, you will hear carried along by this wind a recognition by a progressive element of the mining industry that the time for comprehensive Mining Law reform has finally come. There are now those who will dare to speak out, and many others who would if it were not for fear of retaliation or other actions from others in the industry.

But I believe that now they realize, those in the industry, that they can benefit from bringing this law up to date with modern business practices. So this year I would expect the wind to gust, even to gale force.

In 1987, we first started planting the seeds of this the most current round of the Mining Law reform movement. I recall very well the efforts made by our former chairman of the full committee, Mo Udall, when I first came to the Congress in 1976. I even discussed this effort with him on the anniversary of the Surface Mining Law.

So we have nurtured those seeds. We have nurtured them very carefully, very patiently, with investigations, hearings, legislative proposals, field hearings out in the States. Those seeds have

sprouted. It is now time for the harvest. We have heard from the people, and the people demand change, a change in the way that we do business in this country. That includes the way that we manage the American landscape and that we undertake our fiduciary responsibilities to them.

So I look forward to hearing from today's witnesses—as I have done with over 222 witnesses—who have testified on Mining Law reform legislation during the last Congress. Mr. Chairman, I commend you for moving so quickly in this session and having this hearing today.

Thank you very much.

Mr. LEHMAN. Thank you, Mr. Rahall.

Mr. Allard.

STATEMENT OF HON. WAYNE ALLARD

Mr. ALLARD. Thank you very much, Mr. Chairman.

I would like to associate myself with the comments of both Congresswoman Vucanovich and Congressman Thomas and just add my little footnote. I believe that in a lot of these issues we can reach a balance with economic reasonableness and environmental goals. I think it takes a common-sense approach, and that is what we need to work on bringing forth in these deliberations.

I look forward to continuing to work on this particular issue. The State that I am from is a State that has a rich heritage in mining, and it has been an important part of our economy. You know, I see somewhat of a contradiction when we say, "Oh, we are going to do everything we can to encourage rural economic development," and then we turn around and smack them right across the cheek, you know.

So I think we need to encourage individual initiative and individual savings and individual productivity, and I think sometimes we forget that we can reach a balance between economic reasonableness and environmental concerns.

Thank you, Mr. Chairman.

Mr. LEHMAN. Thank you.

Mr. DeFazio.

STATEMENT OF HON. PETER DeFAZIO

Mr. DEFAZIO. Mr. Secretary, it is great to have you before us today.

Some would have us believe that the question is, "To mine or not to mine," and that is not the question. The question is, Where can we mine in an environmentally responsible manner, and how can we better protect environmental values while we extract minerals that are economic to extract, and how can we get a fair return for the U.S. taxpayer. I don't need to lecture you on that, Mr. Secretary; you are well aware of those issues.

Let me just relate one quick anecdote because I have another hearing I may have to go to on fisheries in my other subcommittee. I had some mining folks in recently, and I was discussing the issue of royalties with them. As the Secretary knows, it was my amendment that was adopted in subcommittee which inserted royalties into the bill in the last Congress.

In the discussion of royalties, they said to me, "Well, that might make some of these—particularly these heat leach mining activities—uneconomic because we have to extract tons, or tens of tons, of minerals and displace huge volumes of land in order to get an ounce of gold, and if you were to begin to assess royalties against those activities it might be uneconomic." And I said to them, "Well, you know, I've never had the timber industry come in to me and say, 'Congressman, selling us the timber at a competitively bid price makes a lot of sales uneconomic; now if you would only give us that timber, it would be economic to harvest timber everywhere.'"

The point is, economics are part of the consideration here. If you have to move extraordinary volumes of lands and not restore that land and the activity is only economic because of that and there is no return to the U.S. taxpayer, particularly in the case of foreign-owned corporations. Those dodge not only royalties in this country because we don't assess them, but they don't pay any taxes to this country for the most part because of the loopholes and the transfer of their profits to other nations; there is no fair return.

I think assessing a fair royalty and other fees for environmental restoration would make some reasonable market decisions about where we should be mining and where we shouldn't be mining in addition to doing other assessments under your leadership in the Department of the Interior and elsewhere in the administration on where and how we should best conduct mining activities in the future.

I look forward to your comments, Mr. Secretary. Thank you for your patience.

Thank you, Mr. Chairman.

Mr. LEHMAN. Thank you. And now Mr. Young has had his coffee, and we are ready to hear from him.

STATEMENT OF HON. DON YOUNG

Mr. YOUNG. Thank you, Mr. Chairman.

You know, I am the longest serving member on this committee, and I could have rehearsed every one of these speeches, so it is always interesting to hear what is being said that is new.

Mr. Chairman, I just welcome the Secretary. I get a big kick out of my friend from West Virginia talking about a new breeze blowing. That is about the same breeze I used to have when I plowed the field with my mules. There isn't much difference. It's a lot of you-know-what. Mr. Chairman, let's not kid ourselves. This is between not to mine and to mine, to employ people and not to employ people.

I look out in this audience—I know most everybody out in this audience—and we hear these great horror stories about the mining industry and how it has been terrible to the public lands. There is a statement in the *Post* today, "BLM stripped of authority over mining land sales." I don't know if many of you know, but since 1872 there have only been 3 million acres out of 2.1 billion acres that have ever been transferred to private ownership, less than the size of Connecticut.

We hear these horror stories about Watt and about Hodel and the rest of these, I think, honorable gentlemen, about how they

have raped the land. In the last 12 years there have been only 120,000 acres transferred. This is all a charade.

I look to the Secretary, and you know, I look at his appointees and appointees of this President, and I am not overly optimistic. I don't think there is an objective individual in the whole group that really looks upon this ability to have us use our natural resources, to mine the minerals we are importing today, to employ Americans.

We all know that Mexico has changed its system completely to try to encourage—in fact, has worked dramatically to bring the mining industry to the nation of Mexico.

Now those in the audience who don't want mining, you are probably going to win this bill, and you are going to come back later on, next year probably, and you will say, "Gee, look at how successful we are; we don't have anybody working; there's no minerals being developed in this country."

Mr. Secretary, you know, I went through the luxury tax. Everybody on that side voted for the luxury tax. We were going to raise a lot of money by getting those guys to buy their Mercedes and the boats. We never raised a nickel; we lost $36 million in income, and we put 7,000 people out of work and broke an industry. People don't have to buy boats, people don't have to buy a Mercedes, and people don't have to mine. They can leave this country, and they are going to do it by the droves.

You have the reins now; you are in the saddle; you bet. If you can go through your program to employ Americans without using our natural resources, more power to you; you can borrow more money to do it. The basis of our economy in this Nation has been on natural resources: timber—yes, a renewable resource; mining—yes, nonrenewable; oil and gas; hydro-power; agriculture. I have seen nothing on that side of the aisle that convinces me that they have ever, ever supported the real jobs that the Nation must have. I think it is a sad day.

I hope you have a better approach, Mr. Secretary. I hear what is coming out of this committee, and I hear from some of your appointees. I really believe it is slanted totally one-sided, to the side that is not American, not for the working man, but for that one special group, the so-called environmental community.

I want to be the first one to say it has to be done safe by and it has to be done right, but it has to be done, and this bill penalizes, stops, exports American jobs.

Thank you, Mr. Chairman.

Mr. LEHMAN. Thank you.

The gentleman from Idaho.

STATEMENT OF HON. LARRY LaROCCO

Mr. LAROCCO. Thank you, Mr. Chairman. I appreciate this opportunity to address very briefly the issue of Mining Law reform.

As you well know, there has been entirely too much rhetoric and too little factual information on this issue. Therefore, I am pleased to have Secretary Babbitt here today. For the first time in 12 years, in my opinion, this country has a Secretary of the Interior who is willing to roll up his sleeves and get down to work with

Congress to resolve complex natural resource issues. The Secretary has set the tone, which is welcome and refreshing.

Mr. Secretary, you will find many of us in Congress who are also willing to go to work. The end of divided government has brought an end to gridlock and an end to the "Hell, no" approach to problem solving.

Is mining reform necessary? Common sense tells us that after 120 years it is. There are past abuses that need to be corrected and future abuses that need to be prevented. The question before all of us is how far do we go to accomplish this much needed reform without destroying the mining industry in this country, and I'm committed to striking a reasonable balance. I'm committed to a workable solution, because I have seen firsthand what happens when a mining-dependent community is hit with massive layoffs.

The Silver Valley of Shoshone County, Idaho, had more than 8,000 well-paying mining jobs in the early 1980s and fewer than 500 today, and that number continues to shrink. Today Shoshone County has a 22 percent unemployment rate.

Even with the mine closures, the mining industry in Idaho still employs about 5,000 people. The average salary is approximately $30,000 per year for a total $150,000,000 in annual wages in my State. The total value of mined products in Idaho, including processing is about three-quarters of a billion dollars a year. It is an industry worth saving, an industry vital to the security of the United States.

Much of the remaining mining in my State is conducted with environmentally sound practices. For example, the Coeur d'Alene Mines recently won the Du Pont-Conoco Environmental Leadership Award for its Thunder Mountain Project, which is surrounded by the Frank Church River Of No Return Wilderness. This is the type of stewardship of the land which needs to be recognized, and it was done without reform.

Mr. Secretary, I appreciate your willingness to set aside the rhetoric and move ahead with common-sense solutions, and I look forward to hearing from you and working with you to bring about true Mining Law reform.

Mr. Chairman, I commend you for calling this hearing so early in the 103d Congress. This committee, our committee, is the proper forum to discuss the impact reforms would have on the mineral extraction industry, whether they are small or large miners. We should move ahead, to be sure, but we should move deliberately and thoughtfully. We have the responsibility to separate fact from fiction, myth from reality, before we move a bill to the full committee, and today is the beginning of that process.

Thank you, Mr. Chairman.

Mr. LEHMAN. Thank you.

Yesterday afternoon, Ms. English called me and expressed her keen interest in this legislation and some concerns, and I suggested that she join the subcommittee this morning since she is a member of the full committee.

We are happy to have you here, and I would recognize you at this time for a statement.

Ms. ENGLISH. I don't have a statement, but I do thank you for the opportunity to sit in and listen and participate.

Mr. LEHMAN. Thank you.

At this time, we will begin with our distinguished witness.

Mr. Secretary, again, we are all very pleased to have you here. It underscores the importance of this legislation and the prospects for its passage. Without objection, we will put the full text of your statement in the record and recognize you, and at the conclusion of your statement I will recognize every member of the subcommittee for five minutes since we know your time is crushed this morning.

So, with that, welcome, Mr. Secretary, and you are recognized.

STATEMENT OF HON. BRUCE BABBITT, SECRETARY, DEPARTMENT OF THE INTERIOR

Secretary BABBITT. Mr. Chairman, committee members, it is a great pleasure to be back before this subcommittee.

I must say that as I entered this committee room this morning I sensed that this is indeed an historic moment, that with this hearing today we begin a progression toward an inevitable conclusion in this calendar year which will be comprehensive Mining Law reform. This surely is—this year, 1993—the year of decision, 127 years after enactment of the original Mining Law commencing in 1866.

By way of introduction, I would like to depart just for a moment from my text and say to all of you that these are very familiar issues to me. During my 3 years as attorney general and 9 years as governor of Arizona, we debated all of these issues endlessly—reclamation, land use planning, whether or not fees should be based on net receipts, upon gross receipts, whether we should have severance taxes, and what the impact would be, if any, on incentives to mine, levels of employments—and these issues have, for some reason, held a magnetic attraction to me, partially because of my background in education and certainly because of the State that I came to govern.

In the course of that, I developed a love/hate relationship with this industry. It was never distant, it was always up close, and I found myself in alternate months and years advocating right up front for the industry and then in the next year in a knock-down, drag-out quarrel over some particular feature.

I can tell you, out of that experience, as sustained and intense as it was, I have relentlessly and always been an advocate of the importance of the role of hard-rock mining in the American West and in the American economy, the economy of my State, of Nevada, and all of the other public land States.

Now it is against that background that I come here I think mellowed by all of those wars, and I believe as a hopefully informed and dispassionate advocate and Secretary of the Interior. I come here in a spirit of workmanlike attention to this bill. We have got to get it passed this year.

I understand that there are many unresolved questions. I understand the concerns of the mining industry with economics. I understand there are many issues raised in the extensive provision of Title II. I have already been in a sustained discussion with the American Mining Congress, Phelps Dodge, and others. I intend to continue that process.

I offer the resources of the Department to all parties as a purveyor of facts and objective analysis, and I will do my best to achieve two simple goals: one, comprehensive mining reform in the calendar year 1993; and, second, a bill which strikes a solid and thoughtful balance between all of the various concerns in which the American mining industry can look to the public lands for a productive mineral extraction process.

I am certain that the bill will pass this year really for two reasons. One, even in the West the majority of our constituents are ready for that reform. I think out West there is an increasing appreciation of an historic process that now culminates. We have been through these issues, and if you go back and read the debates you will find that this very debate is played out again and again and again over the last 100 years. We did it in the early twentieth century with timber and, as has already been mentioned, arrived at market pricing concepts which have not driven the timber industry off American shores. It was done in the 1920s with oil and gas and hydrocarbon resources in the form of a mineral leasing and royalty provision which has worked very, very well across the years.

We even faced up to the issue of grazing, the Taylor Grazing Act, in 1934. That controversy continues, but the underlying principle has been quite soundly established, and now, in this historic year, we at last reach the hard-rock mineral industry.

The other force that I would like to refer to is the President's economic plan. The President has, in my judgment, quite forcefully and courageously gone to the American people and said we have to address the economic issues that have been delayed far too long and presented a comprehensive series of proposals; an important part of which is an appeal to every American to recognize the common good and to be prepared, in a variety of ways, to make some sacrifice, some economic sacrifice, for the common good. Against that background it is simply inconceivable that this administration can say to the American people, "Well, that applies to everybody except the mining industry," and it is for those reasons that I come here eager to participate in this process.

I would like to read several sections of my statement very briefly just to outline some of the issues. The President's economic plan presented on February 17 included a proposal for a permanent hard-rock mining holding fee, which would be enacted in lieu of annual assessment work, and a hard-rock mining royalty program on minerals taken from public lands. These proposals are included as part of the President's fiscal year 1994 budget, and it is for that larger reason as well that I urge your careful support for his initiatives as a way to show the American people that this administration and Congress understand the comprehensive and interrelated nature of those proposals.

Mr. Chairman, I know that you and Mr. Rahall and your staffs have worked long and hard across many years to bring this mining reform to its present state. I salute you for that effort. I am, in particular, pleased to see that H.R. 322 addresses comprehensively all of the major issues in the existing Mining Law, which include, for example, the lack of fair return to the taxpayer in developing the public's resources, the lack of environmental protection standards

which have created problems that we are all increasingly aware of, the archaic provisions that provoke disabling litigation, hinder legitimate exploration, and thwart responsible mineral development, and the fact that mining claims are too cheap and too easy to hold, which creates many well known opportunities and examples of people tying up Federal land for purposes that have nothing to do with mining and, in fact, interfere seriously with other legitimate uses of the public lands as well as the patenting provision that allows the unnecessary conveyance out of public ownership of mineral lands.

We support the process that has resulted in H.R. 322, and we support the broad thrust, if not all the details, of this bill. Most important, as I have stressed, we believe that Congress should, this year, enact comprehensive legislation. We want to be supportive.

I have instructed my staff, including the professionals who will be charged with implementation of many of the features of this legislation, to work with you, with other affected agencies, with all of the parties, to suggest ways in which the bill might be improved as it makes its way through the process. At the same time, we are aware that you have worked on this proposal for several years. Reform is long overdue, and it is time to get on with that process.

Let me explain briefly several specific provisions that raise questions. I come not with specific language or answers—I will certainly be prepared to produce that—but now, just several thoughts. Throughout the bill I think there is a potential problem with the statutory bifurcation of responsibilities within my Department. As I read through the bill, my mind's eye crosses "Office of Surface Mining regulatory functions, Bureau of Land Management regulatory functions, and general responsibilities cast upon the Secretary." I would like to work with you to clarify how the regulatory system is going to work and to make certain that the assignment of responsibilities is not so rigid that I wind up with more jurisdictional warfare in my own Department.

I would urge you to revisit the timetables in the bill to make certain that we are on a track of regulatory development that we can actually meet. I think some of the deadlines in the existing draft are not realistic.

Let me also note the importance in providing a fair return to the Federal Treasury of the considerable experience that the western States, including Arizona and Nevada, already have in setting and collecting rentals and royalties from hard-rock mines. I don't think there are any exact patterns, but I think there are some useful precedents.

I am also interested in exploring whether or not small-scale operators can be treated somewhat differently on the issue of royalty, and again, I understand that that is an issue which has been addressed and can be seen in the legislation, at least in several western States.

H.R. 322 has PAYGO implications. Now our preliminary PAYGO estimates will be provided to the Congress in the very near future because, obviously, my Department is charged with both a revenue and an outgo budget, and the assumptions that the Office of Management and Budget has put into the budget are of enormous significance not only in the overall budget but to my Department.

Finally, let me bring to your attention an important matter that has recently come before us that has been referred to by Representative Vucanovich and others. This example illustrates in the most vivid terms why Mining Law reform is so urgently needed.

Let me say at the outset that the American Barrick Company, a wholly-owned subsidiary of a Canadian corporation, is viewed in Nevada as an efficient, responsible exemplar of the mining industry, and I don't raise this example, Mrs. Vucanovich, to impugn the company or its management. I share your view that they have done a very adequate job in the Elko area, and incidentally, whether or not you can lure the President to Elko, were you to see fit to go so far down in the bureaucracy as to invite a mere Secretary of the Interior to Elko, Nevada, I would gladly accept.

Now, here is the issue. American Barrick last year applied for patents which lead to the conveyance of fee simple title to about 1,800 acres of land on this Carlin Trend in northern Nevada. The BLM estimates that this Federal land, which is the subject of the patent application, is near and around the second largest gold mining site in the United States—this application is for land which contains 30 million ounces of gold.

Now, at a market price of $320 an ounce, that gold has a gross value of $10 billion. Yet if American Barrick's application is deemed to meet the standards of current law, and I am obligated then to give that property in the form of a patent to American Barrick, they will receive $10 billion worth of gold for a payment of $5 an acre, which is less than $10,000; that's it, a one-time payment of less than $10,000 for $10 billion worth of mineral resource currently owned by the American public.

Now I bring that to your attention because I think it is a vivid illustration of what is at stake here. If this land is patented, its mineral becomes wholly private. Under current law it is then beyond the reach of any rental or royalty payment to the Federal Treasury. If the land remained in Federal ownership, a Federal royalty could, over the mine's lifetime, produce several hundred million dollars for the Federal Treasury.

For some time Congress has deliberated about repealing the Mining Law's overly generous offer of public resources. This application and several others now pending show what is at stake. It seems to me that Congress might consider enacting promptly in advance of full-scale reform of the Mining Law a provision that prevents the loss of this revenue potential.

This Congress could consider, for example, whether or not any patent henceforth issued under the existing Mining Law should reserve a royalty interest in the United States in any production that occurs. Another approach which you might consider, which would not require emergency action, would be a severance tax on production from any mineral deposit that has been patented out of Federal ownership in recent years.

Those are alternatives which I share for your consideration. I would be pleased to work with this committee and the Congress in any event to see that the general public is treated fairly when its resources are disposed of through this patenting process.

In the meantime, with regard to American Barrick's application, obviously a decision which is of extraordinary fiscal consequences

must be carefully made. The particular applications were filed only last March and April. Now, patent applications normally take, on an average, about three years to process. Given this relatively swift processing, perhaps you can understand, I believe that it is my obligation to review that process with the greatest care in order to make certain that it is appropriate to issue those patents. If, in fact, the process is correct, the i's have been dotted and the t's have been crossed, I understand, as I have told some of the committee members previously, that it is my duty, under existing law, absent direction from this Congress, to let that $10 billion worth of resources go for about $9,000.

In conclusion, we stand ready to work with you and your staffs on H.R. 322 and on the related legislation. This is a year of decision, and I stand ready to work with you.

Thank you.

[Prepared statement of Secretary Babbitt follows:]

MAR 11 1993

STATEMENT OF BRUCE BABBITT, SECRETARY OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES, COMMITTEE ON NATURAL RESOURCES, UNITED STATES HOUSE OF REPRESENTATIVES, ON H.R. 322, A BILL TO MODIFY THE REQUIREMENTS APPLICABLE TO LOCATABLE MINERALS ON PUBLIC DOMAIN LANDS, CONSISTENT WITH THE PRINCIPLES OF SELF-INITIATION OF MINING CLAIMS, AND FOR OTHER PURPOSES.

One hundred twenty seven years ago, Congress enacted the first law to govern mining on federal lands in the West. The basic principles and framework of that 1866 law, as refined in 1870 and 1872, have remained largely intact, and still govern hard rock mining on several hundred million acres of federal land.

It has been apparent for some time that this law no longer serves the public interest. In 1969, Stewart Udall called its reform the most important piece of unfinished business on the public lands agenda. As I have said a number of times in recent weeks, now is the time to move forward with comprehensive reform. For that reason, I appreciate the opportunity to appear here today.

In the President's February 17 Economic Plan, "A Vision of Change for America" the President included a proposal for a permanent hard rock mining holding fee in lieu of annual assessment work, and a new hard rock mining royalty program on minerals removed from Federal lands. These proposals will be included as part of the President's Fiscal Year 1994 Budget. I urge your careful consideration and support for these initiatives as a way to show the American people that this administration and this Congress are fully committed to purposeful reforms.

Mr. Chairman, I know you and Mr. Rahall and your staffs have worked hard and brought Mining Law reform a long way in the past few years, and I salute you for it. In particular, I am pleased to see that H.R. 322 addresses all of the major defects in the existing mining law:

--the lack of fair return to the taxpayer in developing the public's minerals;

--the lack of environmental protection standards, which has created serious problems that are difficult and expensive to resolve;

--archaic provisions that provoke disabling litigation, hinder legitimate exploration, and thwart responsible mineral development;

--the fact that mining claims are too easy to locate and cheap to hold, which creates many opportunities for persons to tie up federal land for purposes that have nothing to do with mining, yet seriously interfere with other legitimate uses of the public lands; and

--the patenting provision that allows the unnecessary privatization of federal lands and other resources.

We support the process that has resulted in H.R. 322, and we support the broad thrust, if not all the details, of this bill.

Most important, we believe the Congress should, this year, enact comprehensive reform. Unlike the Reagan-Bush Administration, which opposed meaningful reform, we want to be supportive and constructive players in this process. I have instructed my staff, including the professionals who will be key to proper implementation of any reform legislation, to work with your staff and with other affected agencies to suggest ways in which the bill before you might be improved, to make its implementation easier and more efficient, without compromising on its fundamental objectives.

At the same time, we are keenly aware that you have worked on this proposal for several years. Reform is long overdue. We will work to provide the Committee with further suggestions for refinement of H.R. 322. We will do this as soon as possible to avoid any delay in your consideration of the bill.

Within that context, let me briefly mention some of the specific provisions in H.R. 322 that we believe may cause problems in administration.

- This bill, as drafted, assumes that there is a sound technical base for meeting the active mining and reclamation requirements of the legislation. This may not be the case. We may have some suggestions for providing the necessary sound science to ensure environmental protection.

- Another problem is the bifurcation and duplication of responsibilities within the Department. An example is that the Bureau of Land Management, and the Office of Surface Mining Reclamation and Enforcement would be responsible for enforcement and inspection activities. No one agency would be solely responsible and accountable for the implementation of each responsibility.

- Some of the timetables in the bill should be reexamined to assure that they are realistic or that deadlines will not have passed by the time the bill is enacted. For example, completing well thought out rulemaking in a year, as would be required by H.R. 322, would be extremely difficult.

Frankly, what we want and would hope to achieve in a reform bill, besides comprehensiveness and a fair return to the taxpayers, is

efficiency with a minimum of confusion and under a process that is as simple, predictable and cost efficient as possible.

Let me also note the importance, in providing a fair return to the Federal Treasury, of the considerable experience of western states in setting and collecting rentals and royalties from hard rock mines. It might be useful to examine that experience for guidance. I am also particularly interested in exploring whether small-scale operators can be treated somewhat differently on royalties, which I understand is the practice in some States.

H.R. 322 has PAY-GO implications. Our preliminary PAYGO estimates will be provided to the Congress as soon as practicable.

Finally, let me bring to your attention an important matter that has recently come before me. This example illustrates in the most vivid terms why Mining Law reform is so urgently needed. American Barrick Goldstrike last year applied for patents (fee simple title) to a few thousand acres of Federal land in Nevada under the Mining Law. The BLM says that the company may qualify for patents to about 1,800 acres.

The BLM estimates that this federal land, already the site of the second largest gold mine in the United States, contains about 30 million ounces of gold. At a market price of $320 per ounce,

30 million ounces of gold. At a market price of $320 per ounce, that gold has a gross value in place of ten billion dollars. Yet if American Barrick's application is deemed to meet the standards of current law, I am obligated to give it this property for about ten thousand dollars (at $5.00 per acre). And that's it - a one-time payment. To say that is not good public policy is putting it mildly. It is ludicrous.

If this land is patented, it and its minerals become wholly private. Under current law, it is then beyond the reach of any rental or royalty payment to the Federal Treasury. If the land remained in Federal ownership, a Federal royalty of 12 1/2 percent as proposed by the Administration, or of 8 percent as endorsed by this Committee last year, could, over the mine's lifetime, produce up to $1.25 billion or $800 million, respectively, for the Federal Treasury.

For some time Congress has deliberated about repealing the Mining Law's overly generous offer of public resources. Barrick's application (along with several dozen others now pending) shows in dramatic fashion the revenue potential being lost under current law. It seems to me that the Congress ought to consider enacting, promptly and in advance of full-scale reform of the Mining Law, a provision that prevents the loss of this revenue

potential. Congress could require, for example, that any patent henceforth issued under the Mining Law reserve a royalty interest in the United States in any production that occurs.

Another approach worth considering, which would not require emergency action, is a severance tax on production from any mineral deposit that has been patented out of Federal ownership in recent years.

I would be pleased to work with the Committee and the Congress to see that the general public is treated fairly when its resources are disposed of into the private sector.

In the meantime, with regard to the American Barrick applications, obviously a decision with such large fiscal consequences must be carefully made. These particular patent applications were filed only last March and April. I understand that patent applications normally take, on average, some three years to process. Given this relatively swift processing, I intend to review any proposed patents to American Barrick to be certain that all the "i's" have been dotted and the "t's" crossed, before I hand over $10 billion in public property for a pittance.

We stand ready to work with you and your staffs on H.R. 322 and related legislation aimed at reducing revenue loss from patenting.

This concludes my prepared statement. I will be pleased to answer questions.

Mr. LEHMAN. Thank you, Mr. Secretary. We appreciate your testimony and especially your offer of your cooperation and the cooperation of your staff here as we move forward, and we certainly will attempt to work on the areas that you have identified—the bifurcation of powers within your Department and also possibly coming up with some differential component here for small-scale operators versus large operators in terms of how the royalties are assessed.

Obviously, the word is out that you have revoked the BLM authority here to issue patents, and, based on what I know, I am very pleased that you took that action. I think it was a wise and prudent thing to do given the facts at your disposal as you have just outlined them.

I was wondering—we single out American Barrick here—do you have any idea how many other patents are currently pending before the Department and possibly how many acres are involved in those?

Secretary BABBITT. Mr. Chairman, my staff informs me that the count is about 450 applications and that we are looking, I think, at something over 100,000 acres of land. About 150,000 acres potentially are patentable.

Mr. LEHMAN. And was American Barrick singled out here as opposed to other applications that have been pending, some for as long as 4 or 5 years?

Secretary BABBITT. Well, that obviously is the issue. Now the position of American Barrick—which I cannot tell you at this time to be incorrect—is that under the procedures then in effect at the Bureau of Land Management that that company, recognizing the stakes, simply did an extraordinarily good job of preconferencing, of preparing applications, of marshaling the information, of using a BLM procedure then in existence to contract out to the private sector some of the studies of mineral potential which are required before a patent is approved up, and that that accounts for the acceleration. If that is, in fact, the case, I believe that it will be my obligation to issue the patent.

Obviously, in light of the allegations that somehow the short time period is a reflection of some kind of impropriety, I will pursue it very carefully, and I will follow the law.

Mr. LEHMAN. As I understand it, the BLM set up a fast-track process recently to speed up the granting of these patents, and that is what the American Barrick proposal is coming under here. I would just like to know a little more about that. Was it in the best interest of the public for them to set up that process? I mean, what were the motives here?

Secretary BABBITT. Mr. Chairman, obviously the speeding up of the patenting process was an experimental program put in place some time prior to the events were are talking about in the last several years.

I suppose that, to answer your question, it really relates back to a philosophical question, and that is the role of the Bureau of Land Management: Are we facilitating, that is, establishing, a fast conveyor belt to get lands into patented private ownership, or should you look at a regulatory process which is very deliberate, particularly considering that the economic consequences of getting the pat-

ents as it affects the mining process are nil. I mean you can get the mine going and mine to your heart's content without a patent.

So, you know, it may be that there is simply an issue of regulatory philosophy. I think I can tell you where I come out; that is, that we ought to look at these matters carefully.

Mr. LEHMAN. I think the obvious concern people sitting up here have is that we see this all of a sudden taking place at a time when it is generally acknowledged out there in the world that we are going to have Mining Law reform, and lo and behold, there is a fast-track process to put all these patents through prior to our being able to act on it. Justified or not, it is hard to resist the temptation to think that is the case.

Do you intend to halt the pilot project?

Secretary BABBITT. Mr. Chairman, what I have done is revoke the administrative authority in the Bureau to sign off patents. Now that is not meant to be a statement of policy, it is a reflection of the fact that my nominees for the director of the Bureau of Land Management, have not yet been confirmed. They have both been submitted but not confirmed, and it seems to me that across that gap it is quite important for me to look carefully.

Now, should I change the experimental fast-track process? I will look carefully at that. My guess is, it doesn't have any practical consequences at this point if we assume that a mining bill will become effective by year end, but I understand the thrust of your question and will certainly look at it.

Mr. LEHMAN. Thank you.

Finally, the President has proposed a 12.5 percent royalty. I think this bill has an 8 percent figure in it; and also the President is recommending extension of the $100 holding fee. I would like you to comment on that. How do you see that interfacing with the legislation before us?

Secretary BABBITT. Mr. Chairman, committee members, it seems to me that in a way it kind of brackets the economic discussion. We now have a range of possibilities. I'm sure that the industry will weigh in, and at some point is suspect that it is very likely. If the past is any indication, they will relatively quickly abandon the notion of a patent for the value of the surface land as a measure of any economic significance and that they will move into the range of discussion.

What is the appropriate fee? I think I can say the Department is willing to listen to the economic testimony. I am mindful of the fact that the President's budget from OMB makes some important revenue assumptions with respect to the mining industry and that I can't depart from those revenue assumptions without hearing some alternatives. Otherwise, the whole thing starts to unravel.

Mr. LEHMAN. Thank you very much.

Mrs. Vucanovich.

Mrs. VUCANOVICH. Thank you, Mr. Chairman.

Mr. Secretary, less than a month ago you said to me in this very hearing room, "Congresswoman, I'm not as scary as you might have been led to believe," and I want to believe you, but the actions of the last few days have been very unsettling to me.

On March 2, you issued a Secretarial Order that revoked the delegation of authority of the Bureau of Land Management to issue

mineral patents, and that is what you have been talking about with our chairman. Mr. Secretary, the Department and this committee both have consistently taken the position that upon the issuance of a first-half final certificate a claimant acquires equitable title to a mining claim subject only to confirmation by the Department of the existence of a discovery of valuable minerals, and the sponsor of this bill, Congressman Rahall, has stated, "Based on established precedent, the issue of the first half of the patent certificate indicates that all requirements for a patent have been fully complied with, including the payment of the purchasing price and property rights," with the only proviso being that the claim is valid—that is, that there is, in fact, a discovery of valuable mineral deposit. His views have been confirmed by the Federal courts in the recent *Marathon Oil* v. *Lujan* litigation.

H.R. 322, as well as the Bumpers bill in the Senate, both acknowledge these vested rights of claimants that hold first-half certificates and have completed all steps necessary to qualify for the issuance of a patent by January 5, 1993. The patent prohibitions of the bills would not apply to such claims. May we assume that you will comply with the law and expeditiously proceed with the processing of applications and issuance of patents where the claimants has obtained first-half certificates and otherwise met the requirements of the law?

Secretary BABBITT. Mrs. Vucanovich, the answer is, yes, I will. I recognize those legal responsibilities, and as I have previously indicated to you and to the Senate Natural Resources Committee, I believe it is my responsibility under existing law to process the second half of patent applications to completion without either accelerating them out the window or simply leaving them in my desk drawer. I again affirm to you that that is my intention.

Now I hope that makes me sufficiently unscary that I will eventually get that invitation to Elko.

Mrs. VUCANOVICH. Well, would you bring Congressman Rahall when you come? We would be happy to invite you.

Also in your testimony, and it was also in this morning's *Washington Post* that legislation be enacted immediately to reserve to the U.S. a royalty interest in all mineral patents. Are you suggesting retroactive application of this principle, or would it apply only to newly issued patents? And what about the constitutionality of denying the property right that is clearly vested to those with the first-half certificates in hand?

And I'm sure you know from our dissenting views on this bill last year, I believe a strong argument exists for grandfathering at least all of those claimants who filed for a mineral survey or a patent application with the BLM. Others suggest even that it is too restrictive, and that is that all claimants of record with discovery demonstrated on their claims have a vested right.

Obviously, this is a very touchy subject from a property rights standpoint, and I am concerned about your statement. I assume that this was just an attitude that was implied, and I don't think the courts would have that attitude. So I just am curious to know what would be done about the retroactiveness on these patents.

Secretary BABBITT. Mrs. Vucanovich, it is the opinion of my counsel that this committee and the Congress do have the power to im-

pose royalties on patents in process. Up to the point of final issuance there is still a sufficient public nexus that it would be constitutionally appropriate to do so.

I put that forward for your consideration, and I recognize that the decision is made by Congress on that issue and not by me.

Mrs. VUCANOVICH. Well, you suggest that Congress could enact a Federal severance tax on production from mineral deposits recently patented out of Federal ownership. I am sure that Congress could do that, as you suggest, but what is the issue here? Recent versus not recent? Or patented and how they patented? You know, I wonder if we ought to include railroad grants and State school sections, and what about the "equal footing" doctrine upon which western States rely? You know, why shouldn't gold producers in South Carolina pay a Federal severance tax if the mines on private lands in my district would be required to do so? I mean, what is the difference?

Secretary BABBITT. Well, I agree there are many, many different permutations and combinations. I think the legal requirement is greatly simplified that there be a rational base for the point at which the lines are drawn, that there be rational distinctions, and I suggest in my testimony that the recent issuance of patents on Federal lands is that kind of distinction. Admittedly, the exact drawing of any line in any fiscal type issue is, to some degree, arbitrary.

Mrs. VUCANOVICH. I just have one more perhaps question or statement, and I'm talking particularly about Barrick. You know, you are talking about $5,000,000 of gold for $10,000, and I'm not sure that your numbers are quite correct. You know, the in place value of those 25 or 30 million ounces of gold at the Goldstrike mine is really a lot less than $10 billion, and unless and until it is blasted and mucked and hauled and crushed and autoclaved and then extracted from the ore, the gold is worth only the finding cost, which these days is about $20 to $25 per ounce. So I think it is okay to say that this $5 billion is there, but, you know, that isn't just sitting there waiting to be taxed.

Secretary BABBITT. I understand that. The issue of a gross receipts tax is, again, one that has been confronted before by this Congress in the form of the oil and gas leasing legislation. The oil and gas royalty is a gross receipts tax. It has, across the years, been modified, in my understanding, with moving it slightly toward the net receipts concept. But the basic concept has endured for 70 years with respect to hydrocarbons.

Mrs. VUCANOVICH. Well, I realize that my time is up. Thank you very much, Mr. Secretary.

Mr. LEHMAN. Thank you.

Mr. Miller.

Mr. MILLER. Thank you, Mr. Chairman. Mr. Secretary, welcome to the committee, and I think once again we see the wisdom of the President's choice in appointing you Secretary of the Interior. In these issues that confront so many of us in the West in terms of the outcomes, but nevertheless clearly national issues with respect to the concerns of the people of this country, I think we will benefit by your tenure, given the fact that you have spilt both political blood and capital on these issues in your past positions. I want to

reinforce what you have said about your own office and what the chairman has said about this subcommittee, and that is that this is an open process. I believe we will have a result this session, and this is going to become the law of the land, and we welcome those who want to make constructive suggestions for changes.

You and I have talked about how your administration and this committee can work together as we receive input from different sources about changes that should be made in the legislation. We are prepared for that. Very often, however, we find that people who don't get the result they want suggest that the process is closed.

There will be many who won't get the result they want throughout this process, but we have tried to continue to make sure that we are working off the best evidence and the best information that can be provided to us, and I want to reinforce that understanding among all of the various constituencies.

Let me, if I might, just ask you a couple of questions that relate both to our obligations with respect to the decisions around royalties, the President's economic plan, and our committee obligations with respect to the budget proceedings. What is the real basket of Federal benefits here that this mining industry benefits from specifically within the Tax Code. If you can either tell us this morning or provide for us the cumulative effect of the tax provisions in the current Code with respect to expensing and accelerated depreciation and depletion provisions and allowances within the Code, I think that will be very helpful for us to understand.

Many have said here that obviously there are additional benefits beyond royalties that this industry pays in terms of taxes and what-have-you, but I think it is very important that we understand the interplay between the Tax Code and our concerns with royalties.

I would also be interested if you could talk to others in the administration about what they expect the benefits of the proposed investment tax credit in the President's economic plan might be for this mining industry, and questions of how that plays off. You mentioned looking at small miners somewhat differently than large operators, the distinctions that might be drawn there.

Secretary BABBITT. Mr. Chairman, this is not an area where I claim much expertise, but I think it is an important issue, and I would be very happy to go to the Secretary of the Treasury and the director of OMB and see if we can put together some analysis of this.

I might also add that there are a lot of areas where we don't have good facts. I was really astonished when I tried to order up from my own Department some figures regarding the volume and value of mineral production from public lands. There is, as you have noticed, something of a divergence between the OMB estimate of the gross value of minerals produced and the CBO estimate.

As I went to call up some figures, the answer I got was, "We don't have any." There is no reporting of any kind either initiated by my Department or brought up from the industry as to what we are talking about here, and again it seems to me that we ought to try as best we can to get the correct figures on the table in order to do the economic analysis of employment, the effects on the in-

dustry, the amount of revenue generated, and the trade-off between the holding fee royalties, whether it ought to be gross or net.

Mr. MILLER. If you can provide that, please do because I think there is an interplay there that is very important in terms of the impacts of our decisions on the industry that we need to know.

Finally, this legislation is going to require additional duties, as you have already pointed out, within your Department. Clearly the direction that mining is taking in some cases with the leaching system and others requires additional monitoring and an awareness of what is taking place throughout that process both before in design and during in monitoring and afterwards in reclamation and monitoring of that process.

As you mentioned, we have some PAYGO problems, as we refer to them around here, in terms of the cost of those balancing out with revenues to be generated within the budget process, and I just wondered if you had given some consideration to looking at processes by which the Department can be reimbursed for those activities. You know, if a home builder today wants to build a house and generate economic activity, he is charged, at least in our State, for the full cost of issuing those permits, for the inspections during constructions, and sign-offs after every time the person comes from the county or the city to sign off on progress reports, and compliances with permits; that individual is charged for that activity.

Again, we are going to spend an awful lot of time with the increased environmental concerns around this industry in long-term monitoring because of, again, the change in the direction of the industry. I just have got to raise that issue with respect to financing those activities. We just assume they come out of the general fund, and I don't know that we can continue to do that.

I don't expect you to have an answer for that, but I think it is important that we start looking at how we are going to get reimbursed for some of those activities. I'm sure most States do and most local jurisdictions of government now do, and I think we have got to ask that question about the Federal Government.

Secretary BABBITT. Mr. Chairman, I think the trend is absolutely clear. I was reading yesterday some of your handiwork from several years ago called the Indian Gaming Regulatory Act, and there is in fact a surtax.

Mr. MILLER. I don't lay claim to that exactly. I forget who we are blaming. [Laughter.]

Secretary BABBITT. That was just by way of saying yes, the concept is clearly on the table, in a manner of speaking.

Mr. MILLER. Thank you very much, Mr. Secretary.

Mr. LEHMAN. Mr. Young.

Mr. YOUNG. Mr. Secretary, if H.R. 322 is enacted, do you believe it will result in more jobs or less jobs in the mining industry?

Secretary BABBITT. Mr. Congressman, there would clearly be an increase in jobs generated by the reclamation process. There is a large piece of the royalty provisions—the percentage, I think, is different in the OMB proposal and in this bill—earmarked for reclamation activity, and that will be, I believe, a significant generator of substantial jobs.

Now, is there some economic disincentive on the margin? Well, that is an argument that is made against the gross receipts royalty

approach. If you do a gross receipts thing on the margin, you will get a shift toward high-grading because you have, in fact, increased on the margin the costs. That is an economic principle that applies to virtually any kind of levy, fee, or tax. It is an argument that is made for shifting to the net proceeds approach.

We have had a lot of experience with that in Arizona, and I can tell you, it opens up a basket of snakes all of its own in trying to figure out what net proceeds are.

So the answer is yes, economic theory says that on the margin an increased cost is some disincentive. The reclamation proposals clearly generate a fair amount of additional employment.

Mr. YOUNG. Well, what you are saying, reclamation, aren't really mining jobs, they are recovery jobs; they don't produce any new real dollars. Is that correct?

Secretary BABBITT. Well, that leads us into another philosophical swamp, and I would argue to you that good reclamation does generate additional economic returns for two reasons: one, if the reclamation is done properly, it avoids these extraordinary Superfund problems that we now see around the West where it was not done and where we are now redeploying vast amounts of money which might go to other, more productive purposes to clean up after the fact. That is, of course, the general sustainable resource use argument which I happen to think is correct.

Mr. YOUNG. Well, again, I hope you are correct, Mr. Secretary, because we are going to review this again after this administration and see whether we have had a decrease of jobs. I heard the same argument from Russell Train, how the EPA creates jobs, but none of them are real jobs, they are jobs that produce no new wealth. One of the problems we have in our economics for this country is that there is no new wealth being developed. We just redistribute the dollars, and you know, the mining industry is not a healthy industry in this country even right now under the present 1872 Mining Law.

I think the gentleman from Idaho put it very clearly. We have lost tremendous jobs across this country because of the prices of minerals, and we know that, and I am just very, very concerned. I, frankly, have more faith in yourself than I do this committee, right up front. I have said this before because I have watched this committee work, and they have never passed any legislation in 20 years that produced any new wealth. They have locked up our lands, took away access to those lands, discouraged investment, made this, in fact, the committee of parks, no natural resource use, and like I say, I have a little more faith in you. If we come back, you know, 2 years or 4 years from now and find out we have a totally crippled mining industry, I hope we have the ability and the courage to review this issue because I don't think you are going to see an increase in jobs—reclamation jobs yes, but they are temporary, they are not permanent, and they are not jobs that create new wealth.

Thank you, Mr. Chairman.

Secretary BABBITT. Mr. Congressman, if I may, very briefly, I again emphasize that there is, I think, an important ground for arguing, not about whether there should be a royalty but about the marginal trade-offs that different levels of royalty entail. Second, I

again say to you, I understand and believe that the provisions in Title II that relate to reclamation and to land use process are worthy of a thoroughgoing discussion about their actual, on-the-ground effects in Clark County, Nevada, or Pima County, Arizona. What I will be back to do is to try to avoid the philosophical debate in favor of sort of duking it out line by line about what it will do to an open-pit copper operation in Arizona or a heat bleaching operation for gold on the Carlin Trend, and how it is this bill will interact with that issue, with enough guidance so that we don't simply leave to the Secretary of the Interior a vast general mandate to do good. Now I know that under my stewardship that would be a good way to do it, but maybe not in the future.

Mr. YOUNG. One last thing on the bill itself. You know, we had hearings in Fairbanks, and I went back to the bill and I didn't see any of the hearings' testimony reflect what this committee was supposed to be listening to. The biggest concern we have out there—because most of our miners, believe it or not, are smaller miners—we have, of course, the Greens Creek Mine, which is a large mine, and the Red Dog Mine, which is a large mine. You know, we have some large mines, but most of them are small miners, and their biggest interest is the finders' rights: If I go out and find a find, do I have a right to it if it is on public land? What are your feelings on that?

Secretary BABBITT. Well, it is kind of a tough question. It is hard to define a finder's right until you have staked a claim.

Mr. YOUNG. Well, I'm saying I have staked the claim under the present law. If I find the claim and prove the claim up, I have a right to that claim.

Secretary BABBITT. Right.

Mr. YOUNG. Under the original proposal that came out of Mr. Rahall's committee—and whether it is still in there I don't know—was, in fact, I would have to come back to you, and you would have to put it to the highest bidder, and whoever bid the highest would get it, and that was their biggest concern because it eliminates the little miner. There is no way he can do it; he can't bid against Ohio or Anaconda or any of these other people; he can't do it if it is on public land. Is there a way to protect that small miner?

Secretary BABBITT. Here I would defer to the author of the bill. I read the Rahall bill as continuing in concept the present location concept, and I read it as saying that the finder would have the right to benefit from his superior sense of geology and to sell it for a windfall. Whoever is in the process would be subject to the diligence, financial mining plan reclamation provisions.

But I read it as saying that: if you discover a two-foot vein of gold in a quartz outcrop, stake a claim, get into the process, you can turn around and sell it for $20 million to Mr. Rahall.

Mr. YOUNG. What you are saying is, as this bill progresses, if you see that deter from that concept, that you would not support the legislation, that you would encourage us to keep the finders' rights.

Secretary BABBITT. Yes, I think it is a fair concept.

Mr. YOUNG. Okay. Thank you.

Mr. LEHMAN. Mr. Rahall.

Mr. RAHALL. I would say to the gentleman from Alaska that under the legislation I have introduced we have no discovery re-

quirements. You stake it, you comply with your diligence requirements, you mine it. That is the only requirement. There are no discovery requirements in the pending legislation.

Let me say further to the gentleman, when we brought this bill before the committee in the last session, he was quoting from the Communist Manifesto, and he insinuated or alleged on occasion that I was taking this bill in directions directly from the Communist Manifesto. So what we have decided to do is take the compilation of mining laws and the changes we made last year, and we put it in a Communist Manifesto red-bound volume just for the gentleman from Alaska.

Mr. YOUNG. You picked the right color. I'm glad to see that. Now we are exposing it to reality. [Laughter.]

Mr. RAHALL. Let me say in addition to the gentleman from Alaska in regard to the question he asked about jobs, we heard the same questions raised and the same charges by industry leveled prior to the enactment of the Surface Mining Control and Reclamation Act of 1977, that it would cause a loss of coal being mined and a loss of jobs in the mining field. The year prior to enactment of SMCRA, we were mining about 500 or 600 million tons of coal a year. Last year's figures were up to 1.1 billion tons of coal mined some—what—15 years after enactment of the Surface Mining Law. So I think those concerns, once we have gotten into the true facts of the legislation, are pretty much negated, once the facts are revealed.

Let me say also to the gentlelady from Nevada in regard to the notion that I first advanced that a right to a patent vests once the first half of the final certificate is issued provided that the ensuing mineral examination supports a discovery of valuable minerals, I was attacked at that time when I was advancing that notion by your side as saying, "takings, takings, takings," et cetera, et cetera; that chant rose continually.

So today I'm glad to see that you are now agreeing with me and that we have discarded the notion that the mere act of applying for a patent brings about a property right. I appreciate that.

I'm not going to spend much time asking questions because I perfectly agree with just about everything the Secretary has said in his statement. I think once one agrees and there is that type of agreement reached, you should not be questioning.

But, Mr. Secretary, very quickly, just one suggestion in regard to a question that was asked by our chairman, Mr. Lehman, just a minute ago. That was in regard to the fact that the administration proposal does call for both a 12.5 percent royalty and making the $100 holding fee permanent that was imposed on a temporary basis in last year's—fiscal year 1993—appropriation bill. The administration is now proposing to make that holding fee permanent. I would suggest that you consider modifying this proposal from a per-claim basis to an acreage basis, and I do this for the following reasons.

As you know, mining claims are not consistent in their acreage. The vast majority of them do average about 20 acres per claim. Under my bill, existing claims would be maintained at their current acreage; new claims, however, would average about 40 acres per claim. This is because we require that they be staked on a quarter-quarter section basis where a public land survey exists. So,

as such, if this holds and if we adopt the $100-per-claim holding fee proposal, there would not be payment equity between existing claims and new claims. That is the reason for this suggestion, to try to achieve that payment equity.

To address this situation, I think it would be preferable to follow the rental fee that was set up in my bill. I not only think that we could more equitably meet whatever budget target the administration is seeking, but it maintains the type of arrangement we have for other minerals, such as in the oil, coal, and gas regimes on public lands.

I make that in the form of a suggestion, and if you have any comment I would welcome it, or if you would rather study it——

Secretary BABBITT. Mr. Rahall, I think there is a great deal of logic in the proposal laid out in your bill. I, frankly, hadn't really focused on that until I was doing my homework, reading through the elegant prose of your bill last night page by page, and I must say, it is a very neat proposal to have it on a per-acre basis. To have it escalate with time, which is, I think, a nice trade-off in saying to people, "You are not going to be burdened on the front end of the system."

But there is a pattern of abuse—I am personally familiar with it—from people not in the mining business in the West who go out and stake claims just as you are getting ready to build a highway or convey land for some other purpose, and it is a form of legalized extortion. You see it all over the West. This sort of escalating thing, it seems to me, is a nice way of separating the sheep from the goats.

I also like the notion that you can credit some development costs against some of those fees. So I will offer this up to Mr. Panetta for his analysis with my recommendation that you have got some interesting approaches.

Mr. RAHALL. I appreciate it.

Finally, I would ask if there is any time frame for your fine-tuning or recommendations that you mentioned in your testimony that you would be submitting to us, and by way of guidance, I would just remind you that May 10 is the 121st anniversary of the law, and if we could possibly get a bill before or by that date it would be nice.

Secretary BABBITT. Mr. Rahall, we have a great deal to do over there. I will respond to your needs. You tell me that May 10 is when you want it; you will get it before then.

Mr. RAHALL. Thank you.

Thank you, Mr. Chairman.

Mr. LEHMAN. Thank you very much.

We have a vote.

Mr. DEFAZIO. Very quickly, Mr. Chairman.

Mr. LEHMAN. We will let Mr. DeFazio go ahead, and we will see where we are then, and if we have to go vote we will come right back to make sure the Secretary can get out of here by noon.

Mr. DeFazio.

Mr. DEFAZIO. Mr. Secretary, in looking at royalties, we developed in Mr. Rahall's version of the bill a division of the revenues, and we established a reclamation fund, a State share to reimburse States for the additional costs incurred with large-scale mining de-

velopments in locales, and obviously a share directly to the Federal Treasury. Would you support a similar division of funds? Have you looked at the division of royalties in that level of detail yet, or does the President's budget require that you assume all funds be made available to the general fund of the Treasury that accrue from royalties?

Secretary BABBITT. Mr. Congressman, the President's proposal does have the 25 percent revenue share for the States which is identical to yours. It gets a little fuzzier after that in terms of what our expectations are on reclamation, and I think that is something we would be very willing to defer to your judgment or offer some suggestions.

I guess what comes to mind is, I am not clear about the underlying analysis of reclamation needs to be serviced out of that set-aside, and I'll try and see if I can find some data on that.

Mr. DEFAZIO. I appreciate that, Mr. Secretary, and look forward to your further analysis, and particularly appreciate that you have protected the State's share. That is very vital to counties and States in the West, as you know, when a majority of our lands are owned by the Federal Government.

Second, on the issue of some sliding scale or other royalty development in terms of looking at the smaller claims and smaller mining operations, I would encourage the Secretary. I attempted to offer ideas in that vein as we were developing the bill in the last Congress but wasn't entirely successful but would look forward to working with your staff on development of that. I would go further to say that in terms of the general burden that would be imposed by this legislation, if we were to look at, for instance, PURPA as a model, in PURPA there is a break point at which you have sort of a short-form application for projects of less than a certain number of megawatts and a much more elaborate long-form application process for projects over a certain number of megawatts. They are both subject to the same burdens in terms of meeting fisheries and other environmental standards and other concerns.

But there is just a much higher burden placed on those larger projects because it is assumed that with the larger projects—and, you know, I think we could make the same assumption with mining—the big firms have the lawyers and the accountants and all the professionals on staff to handle that higher burden. With the smaller mining operations we require compliance, but less burdensome documentation. And I would hope, again, that the Secretary might look along those lines for the smaller operations.

Secretary BABBITT. Mr. DeFazio, I obviously am very receptive to that idea, and the President has indicated his interest in making that distinction in the western resource issues.

I don't have, again, good data on who mines what in the West. My own experience is that mining on public lands is, for the most part, now a corporate operation because it simply is no longer economically possible for the small guy to really produce minerals. The role of the small guy in the West is the kind of thing referred to by Congressman Young. That is a function which is deeply ingrained in the mythology of the West, in the culture of the rural landscape, in the literature, and in people's expectations. I guess I would like to come out the other side of this, able to say to any-

body who wants to find a pick and buy a mule that there's room for you in the mining industry in the West.

Mr. DEFAZIO. Thank you, Mr. Secretary. I share that view and would hope that we can lay aside the mythology that Congressman Young is attempting to create, because I'm very familiar with Mr. Rahall's bill and I'm not familiar with any provisions that would have had that impact on attempts by small miners to have claims.

Mr. LEHMAN. Thank you.

Mr. LaRocco.

Mr. LAROCCO. Thank you, Mr. Chairman.

I will be very quick. I think it is important that the Secretary be able to move on to other things, and we have to move on to a vote.

Mr. Secretary, you don't even have to answer this now, but I was concerned about any information you might have on what the cost would be for the Department to perform the suitability review outlined in title II of the bill. And also there has been some discussion of including much of H.R. 322, including nonfiscal reforms—that is my concern—in the budget reconciliation package. I would like to know if the administration supports broad inclusion of nonfiscal reforms under the President's budget package.

You had mentioned earlier that you didn't have good data. I know there are revenue projections in the Vision document, and I guess they had to come from somewhere, and perhaps you are going to have to reconcile those with OMB. Without going into great detail here, at some point either in writing or now, I would like to know whether the Department makes any distinction between companies, mining companies, domiciled in America or American corporations and foreign corporations as we move down this road to royalties.

Those are a couple of my concerns, and I think I will be able to make the vote, but I am concerned about also making sure you make your next appointment.

Secretary BABBITT. Congressman, I appreciate that. I will follow up on those.

Let me say just briefly my cut on this suitability issue, because I think it is going to be an important debate. There are a couple of unique things about mining on public land. The first one, from the industry perspective, is, you can't just go out and locate a mining industry; you go where the minerals are, and the minerals don't move about for the convenience of the miner.

But the fact remains that in the traditional legal framework that we have operated, dominated by the concept of multiple use, is that mining really has an absolute preference on the general public lands. It is the first claim; it is not a multiple-use decision at all. You have got priority; they are there; you are on it. The question becomes, is there a way of moderating that kind of wide open process without lapsing into some kind of endless land use process planning kind of thing with which we have not had very positive experiences in many areas. I don't know the answer to that. I just raise it as something I think we need to really have a good debate about.

I will follow up on your other questions.

[EDITOR'S NOTE.—See appendix for post-hearing responses.]

Mr. LEHMAN. Thank you very much.

And thank you very much, Mr. Secretary. We appreciate all your time this morning, and I certainly look forward to working closely with you in the days and weeks ahead as we move this legislation forward.

Secretary BABBITT. Mr. Chairman, thank you very much.

Mr. LEHMAN. Thank you.

[Recess.]

Mr. LEHMAN. The hearing will reconvene. I would like to call our first panel to the front table: Mr. Hocker, Ms. Hohmann, Ms. Hieber, and Mr. Parks.

Without objection, we will put each of your statements in the record and ask you to summarize them for us, and we will take the witnesses in the order that we have them listed. We will start with Mr. Phil Hocker, the president of the Mineral Policy Center.

Mr. Hocker.

Mr. HOCKER. Mr. Chairman, we would pleased to proceed in whatever order you prefer, but if it is agreeable, we would like to go in the order of Ms. Hohmann, Mr. Parks, Ms. Hieber, and myself.

Mr. LEHMAN. I have no objection to that and, hearing none, we will proceed in that order.

Mr. HOCKER. Thank you very much.

Mr. LEHMAN. Ms. Hohmann.

PANEL CONSISTING OF KATHRYN HOHMANN, WASHINGTON DIRECTOR, PUBLIC LANDS PROGRAM, SIERRA CLUB; RICHARD PARKS, NORTHERN PLAINS RESOURCE COUNCIL, BILLINGS, MONTANA; JANET E. HIEBER, CONSULTANT ON ENVIRONMENTALLY ABUSIVE FEDERAL SUBSIDIES, NATIONAL TAXPAYERS UNION; AND PHILIP M. HOCKER, PRESIDENT, MINERAL POLICY CENTER, ALSO ON BEHALF OF ALASKA CENTER FOR THE ENVIRONMENT, AMERICAN FISHERIES SOCIETY, GREATER YELLOWSTONE COALITION, IDAHO CONSERVATION LEAGUE, IZAAK WALTON LEAGUE OF AMERICA, OREGON NATURAL RESOURCES COUNCIL, NATIONAL PARKS AND CONSERVATION ASSOCIATION, AND WASHINGTON WILDERNESS COALITION

STATEMENT OF KATHRYN HOHMANN

Ms. HOHMANN. Mr. Chairman and members of the committee, my name is Kathryn Hohmann. I'm the Washington director of the Sierra Club's Public Lands Program here in Washington. Thank you very much for allowing me to testify today before you and other members of the subcommittee on Congressman Rahall's bill, H.R. 322.

Complete replacement of the 1872 Mining Law has long been a goal of the Sierra Club. In fact, I believe our members may have been working on it in 1892 when the organization was established. Rapid disposal of the Federal domain was the national goal at that time. Minerals, timber, water, and range, and other resources were being given away at a rapid clip, and this suited the national goals. But that bonanza is now over. Today, these laws designed to disperse the vast domain have been ushered into legislative history.

The single, glaring exception to that trend is the retention of the 1872 Mining Law. Over the last 120 years, more substances have been taken out of the purview of the 1872 Mining Law in more locations, but the result is a crazy quilt patchwork of litigation and legislation that only a student of public lands history could fathom.

Consider the incongruities. Federal hard-rock minerals under acquired lands in eastern States are leased, but Federal hard-rock minerals in public lands in the West are still subject to claims staking and also patenting. A private party can pay the Government to extract sand from public lands, but gold and silver still go without a royalty to the Federal Treasury.

Elaborate plans are now used to consider putting a mineral like phosphate up for leasing, yet looking at the compatibility of development with other multiple uses is not done with hard-rock mining. Today, hard-rock mining is always considered the highest and the best use of the Federal domain. In the eyes of the Sierra Club member, it is this provision that is perhaps the most loathsome aspect of the 1872 Mining Law.

Our members, seeking conservation of public lands, come face to face again and again with a law that simply declares that all valuable minerals belonging to the United States are hereby declared to be free and open to exploration and purchase. This is a law with an on/on switch when it comes to mineral development.

On a variety of other issues our activists work on, including timber cut levels and range management, wildlife management, even the management of off-road vehicles on public lands, our members are closely involved with the land use planning process. Not so with mining.

So a key element of the bill we are considering today is Section 204. It will begin to bring mining into the existing land-use planning process. We think this is a significant step forward. It will establish for the first time a system in which mining no longer takes precedence over other uses of the Federal domain but is, instead, considered alongside them as part of the multiple-use concept.

After 120 years of mandating "yes," the Secretary would have the discretion to say "yes" but with these safeguards, with these caveats, or even "no" in some cases. Several members of the subcommittee have represented these as the "just say no" provisions; but they could indeed be called, just as fairly, the "could say yes" or "could say yes with these safeguards".

This is significant. We believe Section 204(c)3 can be strengthened, however, and it could assure that land-use plans be amended when an area is deemed unsuitable. We think this would get at some of the cumulative impacts that would start to happen on certain land areas if these plans are not repeatedly amended. This will more firmly link the comprehensive regime this bill will put forward with the existing land-use planning process.

We also have to say today that we are making a considerable concession in moving that from a position where the Sierra Club has traditionally been behind a leasing system. It is a considerable concession in what our position has been in the past.

During the 95th Congress, this subcommittee considered a bill put forward by Congressman Phil Burton, H.R. 9292. That bill was for a mineral lease system. Mineral leasing systems are used wide-

ly on State as well as Federal lands. They vary widely. Some are good, some are bad. We think it would be misguided to stand behind a leasing system only.

We feel real creativity was adopted when this legislation was written last Congress. We have reviewed many leasing systems and came to the conclusion that meaningful reform can indeed take place and leave the concept of self-initiation.

You should know this bill includes a claim-staking system. This would protect claimants from claim jumping and mean when they take a claim on Federal lands, they have done the prospecting and would be able to protect that land from other miners. So we believe this is a meaningful reform within the current claim location system. That is significant.

H.R. 322 also establishes Federal reclamation standards, something the States are crying out for. There is a recent example with the Summitville mine in Colorado where, if sound reclamation as well as operating standards had been in place, perhaps we would not have had this disaster.

This leads me to the other key section of this bill, water protection. The framers or the drafters of this legislation deserve special thanks for water protection. Had the authors of the 1872 Mining Law taken such care with our precious resource of water, perhaps an estimated 12,000 miles of western rivers would not be permanently impaired.

We would like to especially thank Congressman Rahall for his work on water protection. He has seen what the legacy of water impairment has done in his own district.

H.R. 322 would establish a royalty on mineral production, a sensible, long-overdue, badly needed reform. However, the Sierra Club believes the levels should be raised to 12.5 percent as the Clinton budget package recommends. This seems sensible in light of the fact oil and gas leasing on Federal domains is under a similar regime.

The concept of due diligence, like the patent provision, we believe should be ushered into the past. This retains a vestige of the due diligence requirement requiring miners to take or deduct part of the diligence payment from the rental. We believe there are other ways perhaps to deal with the idea of smaller miners, but we think they need to proceed with real caution when we make concessions to small miners.

I would remind you of the abuse and collusion that has resulted from other laws that sensibly, and I think with good meaning, sought to address the small operator considerations. Some of those provisions are already backfiring. Water law is one example in which large companies become many, many small companies on paper in order to avoid provisions in the law that sought to protect small farmers and small operators on Federal lands.

Finally, one other suggestion I might make for H.R. 322 involves the Abandoned Mine Reclamation Fund. As the law is written now, State eligibility is not contingent upon the States having a program to deal with mining on non-Federal lands. We believe the way the bill is written now, we would be throwing good money after bad to States that currently do not have their own statute to govern mining on non-Federal lands. So I would make that one other change.

Overall, the Sierra Club is fairly strong and really makes a good endorsement for H.R. 322. We urge its swift adoption through Congress and ask that we stop the leakage of the Federal domain into private hands and curtail the further abuse under the 1872 Mining Law.

Thank you very much.

Mr. LEHMAN. Thank you very much.

STATEMENT OF RICHARD PARKS

Mr. PARKS. Mr. Chairman, for the record, my name is Richard Parks. I own a sporting goods store in Gardiner, Montana. I appear as chairman of the Northern Plains Resource Council, a grass-roots organization of farmers, ranchers, small business people, and other citizens concerned with protecting clean water and clean air.

We have a direct self-interest in the issue before us today. Many of our members live in hard-rock mining communities and are living and will have to live in the future with the consequences of hard-rock mining.

The examples I cite to support our belief that this is a good bill come from Montana, but you could draw similar examples from virtually any other State that has had substantial mining.

As an organization, we have been on record for 15 years supporting reform, and we have got a number of key issues we are very pleased to see are, in fact, encompassed within this bill. We need some national reclamation standards and strong water protection provisions. We need the replacement of the patenting system with a leasing system. We need some sort of development provisions that discourage speculation. We need a fair royalty, in particular, to help fund an abandoned mine lands program. We need strong public review and citizen enforcement provisions; and we need the unsuitability criteria that makes it possible to say no when circumstances warrant.

Some examples: The Golden Sunlight mine near Whitehall, Montana, was opened in 1982. By 1983, a construction error had resulted in a spill of approximately 9 million gallons of water from the tailings which contaminated nearby domestic wells.

This spill is not an example of ancient history. This is an allegedly modern mining operation. Yet this operation applied for a permit to expand. The agency reviewed it and granted that permit despite advice from Dr. Eugene Farmer in a letter of June 28, 1990, saying the reclamation plan was likely to fail. The permit was granted.

There is a large bond proposed that is supposed to cover perpetual treatment of acid mine discharge from the open pit, but it does not address the acid-producing rock in the waste rock piles. This acid discharge problem's magnitude, I think, can be assessed.

P.S. Kujawa, for the Mine Waste Power Project in Butte, did sort of an initial back-of-the-envelope kind of projection stating that waste rock may contain 3 percent pyrite. That pyrite may generate 1.63 pounds of sulfuric acid per pound of pyrite. In Montana, we are generating right now about 200 million tons of waste rock annually. We are looking, therefore, at the potential production of 9.8 million tons of sulfuric acid. We believe the Golden Sunlight mine is a Superfund site in the making.

Strong water protection provisions are required for these reasons and for a number of others, some of which are cited in my written testimony. I would like to add one that is not in my written testimony.

We have known for a number of years that the Zortman and Landusky gold mine in north-central Montana was contaminated with ground water but couldn't find anyone willing to test it or to admit to it. They finally ran tests. Lo and behold, as we expected, the streams around the area are, in fact, contaminated with acid discharge and heavy metals.

These kinds of results should become much less common if we can enact a responsible Mining Law reform. This bill seems likely to go there.

The Abandoned Mine Lands Program is particularly important to us, and just to put some kind of framework on it, the Butte Toxic Cleanup District has a responsible party identified. The price tag looks like it may be $1 billion. That is going to be a lot of money paid out just for one district. It is widely considered to be the nation's most complex and largest toxic cleanup site.

But, around the West generally, there are thousands of abandoned mine sites for which there are no responsible parties identifiable, at least 4,000 of those in Montana; and initial assessment is that the cleanup on those could run about $20 billion.

One of the interesting facts the Bureau of Labor statistics put out for us is that 25 jobs will be created for every million dollars spent. Consequently, over the time involved, that $20 billion could generate 500,000 jobs. We think this is a substantial repudiation of the claim that this is going to put people out of work.

A further observation on that relative to reclamation of the coal fields: Again, it was claimed these are non-jobs. But, somehow or other, the folks that we know in agriculture in Montana that have managed to substantially augment their income growing seed to provide native grasses and other items that are required in order to do the reclamation don't really see those as non-jobs. They get paid pretty well. The guy who drives the truck that puts the mountain back together gets paid the same as the guy who took it apart in the first place.

So we are inclined to think that these really are *real* jobs.

I would like to second the concern we heard earlier about the need to tie the AML program to a State program of permitting and regulation for State-owned and private lands that are comparable—at least equal—to the program for Federal lands envisioned by the law. That is a substantial hook that will be required to prevent us from having our regulatory programs just bid down to the lowest common denominator which happens on a fairly regular basis.

Strong public enforcement provisions are also something that we are very pleased to see in the bill. The Golden Sunlight mine I just referred to was done by an Environmental Assessment rather than an Environmental Impact Statement, in spite of the fact that it multiplied the size of the pit by 6 times and created a whole new tailings impoundment with the observation that the reclamation plan was going to fail.

That plan was appealed to the Interior Board of Land Appeals which sat on it for 3 years or thereabouts with the imminent prospect damage was going to occur. Suits were brought in State court, and the industry response has been to introduce legislation at the State level that would restrict our access to the process at the State level and make it financially impossible for citizens to attempt to enter the legal process to enforce our constitutional laws.

And Golden Sunlight mine, it might be of interest to you to know, is an unit of Placer Dome, a Canadian mining company.

The unsuitability criteria are also important to us.

Not too far from my home in Cooke City, Montana, there is a proposed project that sits on top of 3 watersheds. The Stillwater River runs into the Absaroke-Beartooth Wilderness, the Clark's Fork of the Yellowstone which is a designated unit of the Wild and Scenic River System. Soda Butte Creek runs into Yellowstone National Park.

The area has been historically devastated by mining. Clearly, here is a case where discretion should be employed. We need to be able to ask and answer the question as to whether or not mining under any given set of circumstances can be conducted safely in this area. There is no way to answer that question except to go ahead and mine.

H.R. 322, fortunately, will correct that.

Industry spokesmen will tell you and have told you that to impose these requirements will put miners out of work. They will tell you the jobs justify the cost to the environment. They even tell you they will mine somewhere in the Third World where the countries lack a regulatory system that can balance environmental protection and worker safety with responsible mineral development.

I have one observation to make about that: That is moral bankruptcy.

The General Mining Law of 1872 contributed to the development of the West and the rise of this country as a world power. It is now contributing to our decline through unsustainable environmental degradation. The Mineral Exploration and Development Act of 1993 will contribute to the development of the technologies and the protection of the resources which will help put us back in the lead.

I want to thank you.

Mr. LEHMAN. Thank you.

[Prepared statement of Mr. Parks follows:]

Northern Plains Resource Council

TESTIMONY OF RICHARD PARKS

IN SUPPORT OF H.R.322

BEFORE THE U.S. HOUSE OF REPRESENTATIVES SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES OF THE COMMITTEE ON NATURAL RESOURCES

MARCH 11, 1993

419 Stapleton Building Billings, MT 59101 (406) 248-1154

Northern Plains Resource Council

Mr. Chairman, members of the committee, for the record, my name is Richard Parks. I own and operate a sporting goods store and fly fishing outfitting service in Gardiner, MT, the north entrance to Yellowstone National Park. I appear today in my capacity as Chairman of the Northern Plains Resource Council, a grass roots organization of ranchers, farmers, small business folks such as myself and other citizens of Montana who are concerned with maintaining our clean water, clean air, responsible land stewardship, community self-determination and sustainable economies. NPRC has a direct self-interest in mining law reform because a significant portion of our membership lives in hard rock mining communities and have had to or potentially will have to live with the impacts. I appreciate the opportunity to support the passage of HR 322.

Throughout my testimony I will employ examples of mining in Montana to illustrate the need for mining law reform. Similar examples can be provided from most other states that have experienced substantial mining activity.

As an organization, we have been on record favoring an update of our general mining law for 15 years. The key issues we identified then remain the basis for the necessary overhaul. We are pleased to find that HR 322 addresses those issues in a generally satisfactory way. We believe that any update must contain the following crucial elements:

1. National uniform reclamation standard;
2. Strong water protection provisions;
3. Replacement of the patenting system with a leasing system;
4. Diligent development provisions to discourage speculation;
5. A fair royalty to help fund an abandoned mine lands program;
6. Strong public review and citizen enforcement provisions; and
7. Unsuitability criteria.

National Uniform Reclamation Standards

The Golden Sunlight Mine near Whitehall, Montana has been open since 1982. By 1983, a construction error had resulted in a spill of cyanide contaminated tailings water in excess of 9 million gallons. This spill infiltrated nearby domestic water wells. This spill is not an example of "ancient history" but rather a modern mine operation. Now, this same mine is proposing a major expansion which includes a reclamation plan that is unlikely to succeed. Dr, Eugene Farmer, a west-wide reclamation specialist for the U.S. Forest Service, in a letter, dated June 28, 1990, to the chief of the Montana Hard Rock Bureau provides compelling evidence that Golden Sunlight's proposed reclamation plan would fail. Despite that advice, the BLM and Montana's Department of State Lands, the permitting agencies, granted the expansion permit. The bond proposed is expected to guarantee perpetual treatment of acid mine discharge from the open pit, but it does not even address the acid producing waste rock piles.

The general magnitude of the acid mine discharge problem is described in a white paper prepared by P.S. Kujawa for the Mine Waste Pilot Project in Butte, Montana earlier this year. It is not unusual for waste rock to contain 3 percent pyrite and each pound of pyrite may generate 1.63 pounds of sulfuric acid. The currently operating mines in Montana alone produce over 200-million tons of waste rock annually that may, therefore, contain in excess of 6-million tons of pyrite capable of producing over 9.8-million tons of sulfuric acid. I believe the Golden Sunlight Mine is a superfund site in the making.

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Strong Water Protection Provisions

Noranda, a Canadian company, is proposing a project that further illustrates the need for HR 322. Their Montanore Project, a prospective silver and copper mine, near Libby, MT, is still in the permitting process. An "exploration" adit was drilled into the mountain and since it was "exploration", the agencies treated most of the details as confidential. Information leaked from the agencies enabled the Montana Environmental Information Center and other groups to bring a successful suit to open the state's records in late 1991. Those records revealed that for the entire 18 months of operation in that tunnel Noranda had been in violation of its water quality permit. The facts had been reported but nothing done about them until the public disclosure forced the Department of State Lands to act. The strong water protection language in this bill is needed to reduce the likelihood of this kind of situation occurring.

A further example of the same need is found in the application of the Stillwater Mining Company, a platinum/palladium operation, to expand its Stillwater Mine, near Nye, MT, and to open a new mine on the East Boulder River, south of Big Timber, MT. In both cases, the company proposes to discharge nitrates and other contaminates into the rivers. Extensive research indicates that the technology exists and the company has the financial resources to reduce or eliminate this type of pollution by installing water treatment facilities. However, without the water protection provisions this bill offers, the company is free to take the cheapest route. By the way, the Boulder River is one of the streams used in the filming of "A River Runs Through It". The story the film is based on is about the Blackfoot River which is now seriously contaminated from hard rock mining.

Replacement of the Patenting System With a Leasing System

One of the most glaring and notorious abuses of the 1872 Mining Law has been the "patent" system by which miners have acquired deed and title to minerals and the lands beneath which they lie. In the 121 years since 1872, the U.S. has granted 65,000 patents to 3.2-million acres of public land, an area approximately the size of Connecticut. Fair monetary return to the public should be guaranteed for the extraction of publicly-owned mineral resources. Patenting of public lands for mineral speculation should be eliminated. A lease-type system needs to be developed, in which the federal government retains control over public mineral resources, rather than allowing private interests to take title to minerals and surface areas without compensation to the public.

Diligent Development Provisions to Discourage Speculation

One of the reasons that flagrant speculation can take place under the patenting system is that there is no meaningful requirement for diligent development of the mineral resources. Under 1872 law, all one must do to maintain a claim is file and affidavit with the BLM that $100 worth of work had been performed each year. This would have represented a significant amount of activity in the 19th century, but today amounts to little more than paying someone to remove litter from the site or do some fence repair.

Any reform of the General Mining Law of 1872 should require diligent development provisions similar to those in the Federal Coal Leasing Amendments Act which require minimum production levels within ten years.

A Fair Royalty to Help Fund an Abandoned Mine Lands Program

The abandoned mined lands (AML) program proposed by HR 322 is excellent and is a substantial refutation of the theory that this will put people out of work. The equipment operator who puts the mountain back gets paid the same as the guy who took it apart in the first place. Resources, particularly water, that are critical to the maintenance of sustainable economies are protected by this work. The clean up of the Clark Fork complex, the largest and most complex superfund site in the U.S. is currently estimated to cost into the billions of dollars. The West generally is estimated to have $20 billion in work to do on thousands of abandoned mine sites, over 4000 of them in Montana alone. The technologies developed for doing this work will be marketable on a world-wide basis. Using an interpretation of data from the Bureau of Labor Statistics, Office of Employment Projections, 25 jobs will be created for every 1 million dollars spent. Consequently, the royalty requirement of this bill should be viewed as a jobs creation provision.

So where is the pit in this peach?

The AML program can and should be strengthened. First, we recommend that the royalty should be raised to 12.5%. According to the Office of Management and Budget document "A Vision of Change for America", dated 2/17/93, a 12.5% royalty would generate $471,000,000 just in the period of 1994-97. This cannot help but look good in this frenzy of budget deficit reduction efforts. Second, I think states will want to get in on the AML program so there should be a hook in it - it should only be available to those states which demonstrate that they have a regulatory program for private and state lands that is as good as or better than that proposed here for federal lands.

Strong Public Review and Citizen Enforcement Provisions

Golden Sunlight Mine is an example of why we need the public participation and citizen enforcement sections of HR 322. The expansion plan was reviewed by an Environmental Assessment (EA) rather than an Environmental Impact Statement (EIS) even though it involved a whole new tailings pond and a six-fold increase in the size of the open pit.

The EA process minimized public input. The decision to grant the expansion permit has been appealed to the Interior Board of Land Appeals (IBLA) which has not acted on the appeal for nearly 3 years. Because of the IBLA's failure to act within a reasonable amount of time, citizen's groups were forced to challenge this dangerously inadequate expansion proposal in state court. It seems probable that the court case will be decided in the citizens' favor. As a consequence, the industry has sponsored state legislation to further restrict public access to the process and make it financially impossible for citizens to bring suit to enforce our constitution and laws. It is important for you to know that the Golden Sunlight Mine is a unit of Placer Dome, a Canadian mining company.

Unsuitability Criteria

Another Noranda project, The New World Project, near Cooke City Montana, is an example of why permitting agencies need uniform statutory guidance. In this case, the project sits at the top of three watersheds; the Stillwater River which then flows into the Absaroka-Beartooth Wilderness; the Clark's Fork of the Yellowstone which is a designated unit of the Wild and Scenic River System; and, Soda Butte Creek which flows into Yellowstone National Park. This area is a most fragile, high-altitude ecosystem. The area has been subjected to sporadic mining for more than a century. The land exhibits many scars from that mining and many old portals are discharging acid drainage. A new mine raises the specter of ecological devastation which would be either impossible or extremely difficult and horrendously expensive to reclaim. It is a perfect example of an area which should

never be mined. Criteria that require the land management agencies to evaluate a site for suitability - and grants authority to deny a permit when conditions of the site or the proposed methodology justify doing so are necessary and a welcome part of HR 322.

Industry spokesmen will tell you that to impose these requirements will put miners out of work. They will tell you that jobs justify the cost to the environment. They will even tell you that they will mine somewhere in the third world where the countries lack a regulatory system that can balance environmental protection and worker safety with responsible mineral development.

The General Mining Law of 1872 contributed to the development of the west and the rise of this country as a world power. It is now contributing to our decline through unsustainable environmental degradation. The "Mineral Exploration and Development Act of 1993" will contribute to the development of the technologies and the protection of the resources which will help put us back in the lead.

I stand ready to respond to any questions you may have - thank you.

Mr. LEHMAN. Ms. Hieber.

STATEMENT OF JANET E. HIEBER

Ms. HIEBER. On behalf of the National Taxpayers Union's 200,000 members, I appreciate the opportunity to appear before you to present our views regarding the 1872 Mining Law and H.R. 322, the Mineral Exploration and Development of 1993.

The desperately outdated 1872 Mining Law has become counterproductive to the interests of the American public who indeed own the mineral-rich lands that are governed by a law that was enacted more than a century ago. We view H.R. 322 as a major step toward bringing our nation's hard-rock mineral policies of the nineteenth century into this twentieth century even as we enter the gateway to the twenty-first century.

Once upon a time, droves of Americans headed West after hearing stories about motherlodes of gold in them thar hills. Yet, in 1993, the richest motherlode is located on this hill, this Capitol Hill, where lawmakers have been hamstrung by a handful of their own colleagues, as well as by past presidents, from stopping the legally mandated plunder of our Federal Treasury by mining companies, both domestic and foreign.

This is a story about plunder, about rape of the land, about fiscal abuse and about financial gore inflicted upon the taxpayer. Most important, in order to have a voice in changing this situation, it is a story the American voter must hear.

Armed with a Federal surplus of $96 million, in 1872 the Congress passed a Mining Law in order to spur rapid development of the American frontier. The law created a Westward Ho program that allowed miners to buy—or "patent"—public lands at $2.50 to $5 an acre. Since then, although saddled with a Federal deficit now estimated at $327.3 billion, the Congress has turned this western program into a welfare program by allowing land-patent fees to remain frozen at the fire-sale price set in 1872.

According to the Congressional Research Service, in 1872 a dollar was worth almost $12 in 1993 dollars. Thus, in today's dollars, the 1872 price is equal to almost $30 to $60 an acre. This price, however, merely adjusts for the difference between the Consumer Price Index of today and the CPI of 121 years ago. It does not take into account the leap in land values, owing to a population explosion that has skyrocketed the demands for both the land itself and the precious metals it holds, over the same 121 years.

For example, the Mineral Policy Center estimates the Treasury has lost $91.3 billion in public lands from only 13 land-patent requests applied for and pending since 1987; whereas an equitable land-patent fee could actually generate $800 million in revenues each year.

Nonetheless, governmental gridlock has prevented even the CPI-adjusted price from becoming a reality. More important, the U.S. Senate has quashed attempts to stop this internal, financial hemorrhaging.

For example, 2½ years ago, the Senate contentiously blocked a proposal to put a moratorium on the issuance of patents. Only 4 days later, the Stillwater Mining Company began the process of filing for patents on more than 2,000 acres of national forest land in

Montana. By making a token payment of $10,180 to the government, Stillwater—which is jointly owned by Chevron Resources and the Manville Corporation—will receive patents on taxpayer-owned land containing, by Stillwater's own estimate, $32 billion worth of platinum and palladium.

The 1872 welfare program plunders taxpayers twice-over: First, it virtually gives away valuable Federal land at rock-bottom prices, and then it completely gives away what is a veritable treasure chest of gold, silver, copper, platinum, uranium, palladium and other precious metals which—unlike coal, oil or gas—are taken from public property free of any royalty charge.

A 12.5 percent royalty on the strip-mining of coal has been mandated for years. A similar 12.5 percent royalty on the $4 billion worth of hard-rock minerals extracted from public lands each year would generate $500 million a year in revenues. Instead of coming out ahead, however, the Treasury has actually lost $3 billion in the past 5 years alone because no royalties were charged. And although hard-rock companies claim that royalties could put them out of business, in fact, they already pay royalties of up to 24 percent for their operations on privately held land.

In what is perhaps the cruelest plunder of all, the taxpayer now is stuck with a staggering tab to clean up the environmental degradation created by old, abandoned mine sites that no longer are of use to anyone.

For example, an abandoned mine site in Montana has created the nation's largest Superfund hazardous waste site. The Environmental Protection Agency estimates it will cost $1.5 billion to clean up this site alone. Unfortunately, however, this site is not alone. Lurking behind it on the Superfund's National Priority List are more than 70 additional mine sites waiting to be cleaned up. The total clean-up cost to taxpayers has been estimated at anywhere from $11 billion to more than $50 billion.

The good news is that one end-of-the-twentieth-century method of extracting the hard-rock minerals does not even involve mining. The bad news is that this state-of-the-art technology employs a "cyanide heap-leach" process wherein a so-called mining company just goes in, blows up a mountainside and pulverizes it into a heap. Indeed, under the 1872 welfare program it is profitable to pulverize 4 tons of earth in order to obtain 1 single ounce of gold.

To leach out the precious metals, the pulverized heap is saturated with a cyanide solution in an elaborate sprinkler/pond system that has been known to contaminate ground water. Ground water, of course,is a major source of our drinking water.

As we sit here this morning, the EPA is paying $38,000 a day, every day, to 55 employees who are attempting to clean up a cyanide heap-leach mine in Colorado that is threatening the water supply of ranchers and farmers in the San Luis Valley. Only 3 months ago, after extracting 280,000 troy ounces of taxpayer-owned gold, the Canadian parent company of the mine pulled up stakes, leaving behind a $4.7 million bond to clean up a toxic disaster estimated to cost U.S. taxpayers up to $60 million.

Amending the bonding regulations now to require mine operators to actually post financial guaranties commensurate with clean-up costs would cut the future Federal tab.

The budget impact of amending the 1872 Mining Law is clear: Immediate new revenues plus mining welfare cuts equals immediate deficit reduction. It is that simple. And that immediate.

Thank you.

Mr. LEHMAN. Thank you very much.

Mr. Hocker.

STATEMENT OF PHILIP M. HOCKER

Mr. HOCKER. It is a pleasure to appear before you today in your new role as chairman of the subcommittee with jurisdiction. You are moving into a role where you will have to fill some very large boots.

The reputation set out for this committee by former Chairman Rahall is an imposing one. He has launched it upon a task which I am very pleased to see you now ready to step in and undertake. They are big boots. They are miner's boots. They are not tasseled loafers. I am sure the subcommittee will continue that tradition in a way that will do credit to us all.

I am pleased here to speak on behalf of the Mineral Policy Center. The Chairman of our Board of Directors is former Secretary of the Interior Stewart Udall. And when he completed his tenure as Secretary, in a statement which now–Secretary Babbitt alluded to this morning, he reflected in a letter to the Public Land Law Review Commission: "After eight years in this office, I have come to the conclusion that the most important single item of unfinished business on the Nation's natural resource agenda is the complete replacement of the General Mining Law of 1872."

That was in January of 1969. As we know today, the job is still unfinished. Unfortunately, the price for the delay in completing that task has been very large, and it is rapidly mounting today. Urgent action is needed. Therefore, I commend the subcommittee for taking up this bill quickly and—I infer from what was said earlier this morning—for planning to move it quickly to conclusion through the House of Representatives.

I am pleased today to speak not only on behalf of the Mineral Policy Center but a number of other citizens and conservation organizations from around the country who all unite in pressing the committee for rapid action on the 1872 Mining Law reform. I think that that body of organizations listed on my testimony and the diversity you see at the table today is representative of the broad kind of concern from not only environmental organizations but also fiscally conservative organizations that this job be undertaken rapidly and pushed to completion. It need not be a job that is punitive to the mining industry, but it needs to be a job which is done in a thorough and comprehensive way.

Mr. LaRocco referred earlier this morning to his experience and to the wealth the Silver Valley mine brought to Idaho, which is well known to me. But he did not mention—I am sure only by omission—the hazardous waste legacy which has also been left behind in the Silver Valley, the Superfund sites which are there downstream of that, some of which will not be paid by the mining companies in many cases who executed the damage in the first place.

It is a job that can be done with balance because I was also on the committee that made the award to Coeur d'Alene Mines which Mr. LaRocco mentioned. Coeur d'Alene did a responsible job as a progressive mining company. We felt they needed to be recognized in accommodation for that. I was proud to be part of that process to give them the leadership award.

Sound mining can be done. Clean mining can be done. It can be done in the United States, and it can be done properly.

Mining Law reform must be comprehensive. I am very pleased to hear Secretary Babbitt use that word repeatedly in his testimony. In my testimony, I give a list of 6 major points which we believe comprehensive Mining Law reform must address.

First, discretion that land managers have the ability to weigh non-mineral values, that we not simply leave the decision to mine or not mine to accidents of geology.

Second, environmental standards for mining operations so the landscape, the environment and the public at large is protected from sloppy or maldesigned operations.

Next, reclamation standards when mining is completed. It is important that that not be confused with the point just before it. Both are necessary.

Of course, a fair financial return to the Treasury and to the public. As Ms. Hieber alluded to earlier, it is not correct to say no royalty is paid on Federal Mining Law claims today. A royalty is paid on virtually every claim which has been mined. It simply is not being paid to the public that owns the land. That needs to stop.

Next a Hard-rock Abandoned Mine Reclamation Program—going by the acronym of HAMR—is a program to go after the sites left around the country causing continuing and growing, spreading environmental damage and bring those under control in a comprehensive way. It will not be done immediately. It will not be done at no cost. It can be a jobs creation program. It can be a program to ease the transition from active mining to a post-mining situation in the community.

Finally, but no less important than the others, an enforcement program that includes both enforcement actions by the agencies but also citizen access to the information, citizen oversight, and citizen supervisions.

Two incidents cited in my testimony, I think, dramatically illustrate the two sides of why it is urgent we move forward with this.

First, let me speak to the Barrick patent situation. Secretary Babbitt made comment to this this morning. It has been mentioned in press stories this morning, in both the *Washington Post* and *U.S. News and World Report.* I think that it is a sad example of mismanagement of the public domain. I don't mean that as a reflection upon Barrick. They are simply doing what the law allows them to do.

I have had the privilege of touring the Goldstrike mine. I was treated hospitably there. I was impressed with the competence of the people managing it.

I am not impressed with the confidence with which BLM has managed the patenting application. Regarding the fast-track process BLM has instituted and which was first brought to its conclusion at the Barrick site, I would say if we are going to experiment

with new and innovative ways to accelerate the giveaway of public lands, we might like to experiment at something less than the largest, most productive gold mine in the country. It seems like a foolish way to test out a new process.

This was mentioned earlier. It seems like an inappropriate time to experiment with a fast-track process when it is well known by the public and the mining community that reform of the Mining Law is imminent and an end to the opportunity to make these rapid profits from public minerals is at hand.

I believe that the process which BLM put in place of allowing the mining company itself to contract for and pay for the valuation of important aspects of its entitlement to exploit the law is inappropriate—at least a conflict of interest—and that it should be terminated immediately. I urge Secretary Babbitt to take that action.

Also, that the work that has been done on the Barrick claim not be accepted, that Barrick claims be reviewed ab initio, once again. No one is attempting to deny Barrick the claims which, unfortunately, the law allows them. However, there is no need to rush them through the process to enjoy the fruits of this stupid law.

Also, BLM should be instructed to review the entire process that led it to this ill-advised decision to put this pilot program in place.

In addition, speaking of BLM, we are well aware of the difficulty of getting adequate data which Secretary Babbitt faces. Much of the information we were able to present is due to the diligent work of a very hard-working member of my staff, Tom Hilliard, who has only been able to do this through, frankly, very hard, persistent, patient, accumulation of data which BLM ought to have available in a readily accessible, central location, both for the information of the public at large and for the information of the Congress and perhaps even the Secretary.

Barrick patents are only a part of the total picture of patenting nationwide. We don't have a total tabulation of all of the claims currently in the patent process, but we have attempted to locate those of significant value. Every time this total is run, for one reason or the other the number shifts slightly. The total, which we believe is accurate according to the best information available today, is $86 billion worth of precious metals and ores subject to the 1872 Mining Law which is currently in the patenting pipeline.

The figures which Secretary Babbitt used this morning for the value at Barrick actually would lead to a larger total than the $86 billion. I think it is foolish to try to worry about whether it is $91 billion or $86 billion. The point is clear: It is a large amount of public wealth.

While these are gross value numbers, not net, as I am sure will be pointed out by other witnesses and questioning today, the royalty that would be collected if the President's proposed 12.5 percent royalty were to be collected over the lifetime of those ore bodies and the values we are using are the company's own values for recoverable reserve amounts. We are not talking total metal in the ground. These are ore reserves. So we are talking a total of $10,750,000,000 of eventual Federal income.

Second, I would like to turn briefly to the Summitville mine in Colorado. I will be touring that site tomorrow. It has been widely reported in, particularly, the Colorado press. And, of course, Mr.

Lehman, you and your folks at Bodie must be thinking that they had a narrow escape because, as you know, the same company that is responsible for Summitville was also proposing to open an operation similar in many ways right next to the State park at Bodie.

The BLM's ability to constrain that under the 1872 Mining Law was very uncertain at best. Most of the Summitville mine is on patented land, although there is still public land involved, both within the mine area, slivers of land that were not patented because of the accidents laid out. And there is substantial national forest land near and around the mine which will be affected.

I believe, again, that the administration and also, frankly, the State program in Colorado, the program which is generally reputed to be one of the better ones, have fallen very short of filling their public responsibilities at Summitville.

And I think Summitville demonstrates why both the points which are covered in H.R. 322; that is, the establishment of adequate environmental programs for mines on public land under the jurisdiction of the Federal agencies, but also the point that was mentioned by several witnesses on this panel a few minutes ago, the need that States that participate in the HAMR program, the Hardrock Abandoned Mine Reclamation Program, be required as a condition of participation to have State reclamation programs for non-public land that are comparable in their effects. Otherwise we may find the hard-rock cleanup program being compelled to pay for the laxity of regulation on private land.

In the end, the responsibility for this lies with Congress. As I say, I am very pleased with the rapid action the subcommittee is undertaking. I am dismayed that the patenting issue still lies before us.

Three times the U.S. Senate has been given the opportunity to put a moratorium in place while the issues of mining were debated at length. Three times the U.S. Senate has turned down that opportunity. Had they accepted that opportunity at any of those three intervals, the problem we are confronted with today at the Goldstrike mine would not be as much of an emergency situation as it is.

The *Economist* magazine, in its recent editorial in the March 6 issue titled "Cowboy Socialists," speaks of the world image of rugged independence, of individualism, of strong moving forth against an adverse nature and succeeding that the American West has built up. But then they rebut that by saying that the West, far from being the home of the free, is a place as centrally cosseted and subsidized as pre-Deng China.

They go through figures for mining and for the other federally subsidized resource industries in the West, and then they issue a challenge, because—as they point out—hidden in President Clinton's deficit-cutting plan are policies that would start to sweep much of this network of subsidies away. Royalties would be charged on hard-rock minerals; grazing and timber fees will go up. Big farmers will pay surcharges for water. Even hunters and bikers may have to pay for their fun.

Mr. Clinton could have gone a lot further, says the editorial. His proposals would net around $1 billion in over 5 years. He has taken a giant and, in the West, an outrageous step. Western politi-

cians trot out a standard argument. They go through some of the traditions. The essence of individualism according to the standard arguments is a miner staking a cheap claim only to hit gold. Miners profiting these days from government subsidies are often corporate and millionaire ranchers, not Clementine's father with pick ax and pail but soft-handed men in Lear jets who do most of their work by computer.

Padding of this sort is the antithesis of what the West is meant to be about. Mr. Clinton's favorite moment in cinema is said to be the scene in *High Noon* where Gary Cooper, playing the sheriff, throws down his badge challenging his critics to run the town better.

The ranchers, loggers and miners of the American West are now being challenged not only to run things better but to be the hard-nosed entrepreneurs the world already thinks they are. Will they rise to the challenge or cling to the Federal skirts? Tension is mounting.

Thank you.

Mr. LEHMAN. Thank you very much.

[Prepared statement of Mr. Hocker follows:]

MINERAL POLICY CENTER

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Statement of
Alaska Center for the Environment,
American Fisheries Society,
Greater Yellowstone Coalition,
Idaho Conservation League,
Izaak Walton League of America,
Oregon Natural Resources Council,
National Parks and Conservation Association,
Washington Wilderness Coalition,
and
Mineral Policy Center

Presented by
Philip M. Hocker
President, Mineral Policy Center

to the
Subcommittee On Energy and Mineral Resources
of the
Committee on Natural Resources
Honorable Richard H. Lehman, Chairman

Regarding
H.R.322, the
"Mineral Exploration and Development Act of 1993"

11 March 1993
Washington, D.C.

Chairman Lehman, Congressman Rahall, members of the Subcommittee:

My name is Philip M. Hocker; I am President of Mineral Policy Center. My testimony today is presented on behalf of the Alaska Center for the Environment, American Fisheries Society, Greater Yellowstone Coalition, Idaho Conservation League, Izaak Walton League of America, Oregon Natural Resources Council, National Parks and Conservation Association, Washington Wilderness Coalition, and Mineral Policy Center. On behalf of all of these organizations, I thank you for the opportunity to testify before the Subcommittee today.

Reform of the 1872 Mining Law is an urgent national priority. The organizations I represent today symbolize the breadth of citizen concern around the country for swift adoption of comprehensive reform. Alaska Center for the Environment is an Alaska-based grassroots environmental advocacy and education organization with approximately 750 members. The American Fisheries Society is an international organization of more than 9,200 fisheries and aquatic science professionals and students. The Greater Yellowstone Coalition is a Montana-based group committed to protecting the health and integrity of the Greater Yellowstone Ecosystem. Idaho Conservation League is a 2,500-member environmental advocacy organization in that state. Izaak Walton League of America is a national conservation organization with 54,000 members. Oregon Natural Resources Council is a 6,000-member group dedicated to protecting Oregon's lands, waters, and natural resources. National Parks and Conservation Association is a 350,000 member citizens organization dedicated to the protection and enhancement of the National Park System. Washington Wilderness Coalition is a conservation organization based in Washington State, with 1,000 members. Mineral Policy Center is a national citizen organization dedicated to cleaning up the environmental damage which the hardrock mining industry has caused in America, and to preventing its repetition.

These groups are only a sample of the scores of local, regional, and national citizen bodies who unite in support of 1872 Mining Law reform. The Mining Law as it stands today threatens fisheries, threatens sportsmen's interests, threatens water quality and natural ecosystems. It's time for it to go.

Comprehensive Reform; Support of H.R.322

Congress must enact comprehensive reform of the 1872 Mining Law. As Secretary Babbitt told the American Mining Congress last month, the different aspects of Mining Law reform are "inextricably tied together." To enact changes which addressed only the royalty and rental aspects of the Mining Law would be to adopt Sham Reform.

Any legislation to reform the 1872 Mining Law must include the following six major elements, to be comprehensive and serve the public interest:

Discretion

USFS & BLM managers must have the ability to weigh non-mineral values, and approve or deny permission to mine as appropriate.

Environmental Standards for Operations

The conduct of mining must be subject to established standards to prevent environmental damage or hazard from faulty operation or design.

Reclamation Standards Upon Completion of Mining

Lands affected by mining must be reclaimed to defined standards when the enterprise is completed.

Fair Financial Return

The owners of the public mineral estate must be given a fair return for its use, including: An end to Patenting, Rentals for locking up public mineral property in claims, Royalty on produced value, and Fees for administrative expenses.

Hardrock Abandoned Mine Reclamation ("HAMR")

A national program should be created to clean up the environmental damage caused by past metals mining; receipts from federal disposal of hardrock mineral property should fund this effort.

Enforcement

Firm provisions must be included to ensure that the standards established by Mining Law reform are enforced. This includes financial assurance standards, inspection requirements, and rights of citizens to full notice, participation, and access to courts.

Our organizations generally support H.R.322, "The Mineral Exploration and Development Act of 1993," and urge its swift enactment. H.R.322 is a comprehensive reform bill. It contains many important improvements over its predecessor, H.R.918, as it was originally introduced in 1991. H.R.322 demonstrates the hard work of Congressman Rahall and his indefatigable staff, who through an Odyssey of hearings and field trips studied the 1872 Mining Law to draft this bill, and the attention of the Interior Committee and other bodies of the 102nd Congress who marked up this text.

There have been many hearings, many witnesses, over the years concerning the need for reform of the Mining Law. A Chronology of recent Congressional attention to the 1872 Mining Law and related issues is attached to my testimony. It is a long list, though even it is not all-encompassing. Can more be said, after all these hours and pages?

Unfortunately, yes. The mischief of the 1872 Mining Law is alive and strong, and I have fresh evidence of the urgent need for reform to submit to the Subcommittee today:

Patent Plunder

The mining industry is plundering the American people's mineral treasure house while Congress debates reform of the 1872 Mining Law. Using the 121-year-old "patenting" process in the Mining Law, gold mining firms and other companies -- many foreign-owned -- are rushing to convert public mineral lands to private property for a pittance.

Tragically, Mineral Policy Center research has found that the U.S. Bureau of Land Management, which should be the guardian of the public's mineral interests, has become an active co-conspirator with the mining companies. The BLM is not merely doing what it legally must under the 1872 Mining Law. BLM is turning control of the patenting process over to the companies who stand to profit from it, BLM is accelerating its handling of patenting to help companies acquire valuable ores before Congress can change the law, and BLM is blocking public access to information about what is going on.

The Goldstrike Giveaway: A Profile in Plunder:

The Goldstrike Mine, in Nevada's Carlin Trend, is now the highest-producing gold mine in the United States. Its 1992 output was 1,100,000 ounces of gold, and the mine is being enlarged toward an even greater annual production target in the future. The Goldstrike mine is on public land, owned and managed by the BLM. The mine is operated by American Barrick Resources, a Canadian company ("Barrick"). Total ore reserves at Goldstrike are estimated by the company to be 20,100,000 ounces. Barrick marketed its output for $422 per ounce in 1992, according to the company.

Congress has been debating reform of the 1872 Mining Law for several years. Reform would mean that the Canadian Barrick company would pay the American people a fraction of the gold wealth it is taking from American soil -- a "royalty." Yet, if Barrick can complete the "patenting" process in time, it will escape having to pay a royalty because its mine will become private land, for the price of $5.00 per acre.

In March and April, 1992, Barrick filed a series of applications for patents to 1144 acres of its mine areas around the Goldstrike site. In October and November, 1992, the company received the "first half of certificate for patent" to 1038 acres. The final patent certificates now await signature and issuance by the Department of the Interior. If these patents are issued, Barrick will pay $5,190.00 to

the Treasury for a resource with a gross value of $8,482,000,000 at Barrick's 1992 realized prices.

Mineral Policy Center has discovered that the Bureau of Land Management employed a new and improper procedure to rush these patents through the process faster than would have otherwise been possible, in an attempt to complete the giveaway before Congress can act.

To acquire mining claims by patenting, a claimholder must prove that a "valuable mineral deposit" has been "discovered" on the claims, and that his claims had priority over all others. The Bureau of Land Management employs specialists known as "mineral examiners" to evaluate whether claims satisfy the "discovery" test -- that is, whether the claimed mineral can be mined and marketed at a profit. This is a complex evaluation. In addition to the costs of mining, the costs of closing down a mine and restoring the landscape must be weighed to determine whether a mine is truly "valuable." At modern open-pit gold mines, where as much as sixty tons of rock may be mined for a single ounce of gold, the cleanup costs are -- or should be -- substantial.

The total sequence of processing a patent application usually takes about two years. Often, more time is required. However, Barrick managed to complete the entire procedure in a few months. **This was possible because the BLM allowed Barrick to evaluate its own claims.**

Under a new and unpublicized "Pilot Project," the BLM allowed Barrick to hire outside mineral examiners to perform the evaluation of "discovery" on Barrick's mining claims. The specialists who determined whether these claims should be patented for $5.00 per acre received payment for their work directly from the company which wanted a "yes" answer. This is a flagrant conflict of interest, which BLM is not just allowing, but encouraging. Barrick is the only company to complete this process so far, but if this abusive "Pilot Project" is allowed to continue, the rush to patent will accelerate.

Not only does BLM now allow companies to hire their own claim evaluators, the Bureau also holds the mineral examination reports in confidence, and will not permit public review. These reports which are paid for by the claim holder are used by BLM to justify patenting valuable lands for a nominal fee, while the reports themselves remain a secret between BLM and the miners.

The Bureau and the Bulldozers:

Thus the Bureau of Land Management is improperly bulldozing mining patents forward, with its new process of inviting miners to pay for their own patent evaluation. Furthermore, the Bureau is obstructing public interest groups' investigations to find out what is happening with patenting of mining claims.

BLM does not have adequate central, current, data on the status of patent applications for mining claims. Public interest groups must contact a number of decentralized locations to get information which is not months out-of-date. Nonetheless, in June, 1992, the Director of the BLM issued Instruction Memorandum No. 92-245 which directed all field offices to refer all inquiries about the Mining Law program to the Washington Office. A copy of this Instruction Memorandum is attached to my Statement. The local offices where current information on claims can be found were told not to divulge that information. This is a serious attempt to impede access to claims information, and a renewed demonstration of BLM's unwillingness to protect the public's interest in sound minerals management.

The Rest of the Giveaway

The Barrick claims are only a fraction of the total amount of public wealth at hazard to miners' patents. Many valuable mining properties are currently being pressed to patent by companies eager to avoid paying royalties or to avoid meeting new environmental standards.

Because BLM does not make the information available, Mineral Policy Center has canvassed to determine the amount of precious metals now in the patenting pipeline. Our latest survey has identified twenty-five major mines which are being patented, with a total gross mineral value of more than $86,000,000,000. These range from the ACC bentonite mines in Wyoming, estimated at $6,000,000, to the Stillwater Platinum/Palladium mine in Montana which has total mineral reserves with a gross value over $38,000,000,000.

These are gross, not net, values. If a 12.5% royalty is adopted, as Mineral Policy Center has recommended for several years, these mines would represent an eventual revenue of $10,750,000,000 to the Treasury.

Plugging the Patenting

I request that the Subcommittee call on the new Director of the Bureau of Land Management to rescind the 1992 direction to local offices to deny information requests. The Bureau should be directed to assemble and publicize complete and timely information on the amount and value of mining being conducted for free under the Mining Law, not to delay and impede public scrutiny. Further, I request that all mineral examinations be made public information prior to issuance of a patent. If a patent is to be issued, the public must have an opportunity to review the basis for that decision.

The evaluation of the Barrick patents through the improper "Pilot Project" should be discarded. The consideration of Barrick's patent applications should be re-started from scratch. Barrick cannot be allowed to acquire any vested rights by

having hired its own mineral examiners, and the entire evaluation of these patent applications must be reconsidered. The Secretary's past delegation of patenting authority did not include the authority to place crucial power over the patent review process in the hands of its beneficiaries, and BLM's staff-level actions were improper and invalid.

But the final responsibility for the Barrick incident and the other patenting giveaways rests at the feet of Congress, and specifically the United States Senate. Three times, in 1990, '91, and '92, the House has adopted a moratorium on patenting as part of the appropriations bills for the Interior Department. Three times, the U.S. Senate has rejected the moratorium. Four days after the first rejection, the Stillwater Mine patent applications cited above were filed.

This Subcommittee, in addition to taking swift action on H.R.322, should pass a temporary emergency moratorium bill to prevent the issuance of any more patents under the 1872 Mining Law while comprehensive reform is deliberated.

Lessons for H.R.322 from the Summit(ville)

At Summitville, Colorado, a cyanide heap-leach gold mine abandoned in 1992 by another Canadian firm, Galactic Resources Limited, is leaking acid, cyanide, and heavy-metals contamination into the Alamosa River. While only a small part of the Summitville site lies on public land (the rest has been "patented" under the 1872 Mining Law in the past), the Summitville site demonstrates the immediacy and scale of environmental problems from modern mining, and the need for 1872 Mining Law reform.

Mineral Policy Center is cooperating with three major gold-mining firms to conduct a professional engineering review of the Summitville site. Final results of that study are not available yet. However, some facts are clear:

* Most mining at the site is recent, having begun in 1986, though there was historic activity there. The problems are new, not historic.
* The site is leaking acid mine drainage, cyanide, and heavy-metals far in excess of EPA water quality standards.
* The company and its subsidiaries have declared bankruptcy in the U.S. and Canada.
* EPA is using Superfund emergency authority to try to prevent greatly increased toxic runoff with Spring snowmelt. EPA activities are currently costing $33,000 per day.
* Cleanup is estimated to cost between $20,000,000 and $70,000,000.
* Total bond on hand is $4,700,000, held by the State of Colorado.
* The U.S. Forest Service relied on the State of Colorado to hold financial security, and does not hold any separate bond, though National Forest lands are affected by the Summitville mine and associated

exploration activity.
* State of Colorado did not take adequate timely preventive measures to protect the public interest.

While we strongly support the general principles of H.R.322, we believe the Summitville example shows that additional measures are needed beyond the language now in the bill. These should include at least the following requirements:

* Insurance against extraordinary environmental failures such as appear to exist at Summitville should be a condition of Plan of Operations approval. The State of Colorado only required that financial security address projected "reclamation" costs which did not include major water-quality repairs. Bonding for "reclamation" only will not protect the public.

* To qualify for participation in the new Hardrock Abandoned Mine Reclamation ("HAMR") program in Title III, states must adopt regulatory programs for all hardrock mining operations within their boundaries. These programs must match or exceed the stringency of the Federal program mandated by H.R.322.

* Approval of plans of operations must be for a limited time period, to allow for plan review and modification when new circumstances are discovered. Colorado is encountering serious obstacles to effective regulation of mines because its programs have historically approved "life-of-mine" permits. The provision in §201(h)(1) of H.R.322 that allows extended-term approvals should be deleted.

In addition, the language at §203(e) regarding limits on delegation of authority by the Secretary should be amended to make clear that any required financial security must be held by, and in the name of, the responsible Federal agency. As Summitville graphically demonstrates, reliance by Federal authorities on State-held bonds is not acceptable procedure.

The Zortman and Landusky heap-leach gold mines, located on BLM land in Montana, further demonstrate the environmental problems which the 1872 Mining Law invites; a recent *Billings Gazette* article about that site is attached to this Statement.

Additional Improvements

Beyond the points noted above, additional improvements should be made to H.R.322 as introduced by:

* Revising the "Coverage" clause at §101(c) to encompass the full scope of activities necessary. As introduced, this clause contradicts the intent of the Bill to address reclamation and mineral activities on some areas which will not remain open to location under this Act.
* Eliminating the claim rental reduction for "Diligent Development Expenditures" provision at §104(b).
* Revising the transition procedures in §405 to bring all plans of operation into compliance whenever they are modified, or within three years, whichever is shorter.
* Requiring all "notice" operations under current BLM regulations to comply with the new Act immediately, through revision of §405(b)(3). "Notice" activities have no statutory recognition prior to the passage of H.R.322, and they should not be granted any special status.
* Setting the royalty rate in §410 at 12.5% of the value of production, as recommended by President Clinton in his budget message;
* Incorporating a requirement for re-authorization of the Mineral Exploration and Development Act at periodic intervals. Much of the mischief of the 1872 Mining Law arises from the absence of any such requirement. Wise as we now have become, our new replacement for the 1872 Mining Law may, in time, acquire its own ignominy if no re-authorization requirement is included.

These notes identify some specific improvements which are necessary if H.R.322 is to fully protect the public interest. We have additional recommendations which we would be pleased to discuss with Subcommittee staff as the legislative process continues.

Conclusion

Chairman Lehman, Congressman Rahall, reform of the 1872 Mining Law is urgently needed to protect the Treasury from further plunder, the environment from further pollution, the public domain from further destruction.

The organizations on whose behalf I appear today applaud the progress which Congressman Rahall and the Interior Committee has made in the past, and which this Subcommittee is resuming, toward final completion of this landmark task. We urge you to continue, with all possible speed.

Time is not on our side. One hundred twenty-one years of special privilege has not been enough to satisfy the mining industry. While Congress deliberates, the miners are rushing to patent and complete their takeover of America's mineral inheritance. The six years which reform of the 1872 Mining Law has already consumed, since Chairman Rahall's first Oversight Hearing in 1987, have been years in which millions of ounces of gold and other precious metals have been taken for free, years in which billions of tons of solid waste have accumulated

without responsible cleanup plans, and have been years in which the mining industry has accelerated its patenting of valuable ores to remove them from public ownership and federal management.

A number of individuals have assisted in the research for this testimony; I would like to specifically commend Thomas Hilliard, of Mineral Policy Center's staff, whose diligence uncovered much of the information herein. We are grateful that the kind of "discovery test" at which Tom excels is not subject to patenting.

Thank you for this opportunity to testify. I would be pleased to answer any questions you may have.

* * *

Attachments to Statement of Mineral Policy Center, et al.:

"A Chronology of Votes and Other Key Dates..."
Instruction Memorandum No.92-245, Bureau of Land Management, 4 June 1992.

Press Clippings:
"Mine disaster worsens to tune of $33,000 a day," *The Denver Post,* 21 February 1993.
"Mine's toxic leaks render river lifeless," *The Denver Post,* 11 November 1991.
"Acid, metals found in mine discharge," *Billings Gazette,* 23 February 1993.

Chronology of Votes

and Other Key dates in 1872 Mining Law Reform in the U.S. Congress:

11 March 1993

**** 1993: ****

16 Mar 93: Hearing, Senate Subcomm. on Mineral Resources Development & Production (Akaka, Chair)(scheduled).

11 Mar 93: Hearing, House Subcomm. on Energy & Mineral Resources (Lehman, Chair).

28 Jan 93: S.257, "Mineral Exploration & Development Act of 1993," introduced (Bumpers +12).

5 Jan 93: H.R.322, "Mineral Exploration & Development Act of 1993," introduced (Rahall +3).

**** 1992: ****

4 Oct 92: House debates, votes on amendments to H.R.918; no vote on final passage.

23 Sep 92: House-Senate conference drops both Reid mining package and House claims moratorium from FY'93 Interior Appropriations bill; retains $100/claim holding fee.

5 Aug 92: Senate adopts Reid "compromise" mining amendments (American Mining Congress policy) to FY'93 Interior Appropriations bill, rejects patenting moratorium, 52-44.

24 Jun 92: House Interior Committee marks up and passes H.R.918, 26-19.

10 Jun 92: Rahall Substitute to H.R.918 released.

**** 1991 ****

18 Dec 91: Senate Mining Subcomm: Field hearing on S.433, Salt Lake City, Utah.

13 Sep 91: Senate floor vote defeats patenting moratorium on FY'92 Interior Appropriations bill, 47-46 (House later recedes in conference).

18&20 Jun: House Mining Subcomm: hearings on H.R.918.

11 Jun 91: H.R.2614, "Mining Law Reform Act of 1991," introduced (deFazio)(similar to S.433).

11 Jun 91:	Senate Mining Subcomm: Hearing on S.433 and S.785.
25 May 91:	House Mining Subcomm: Field hearing on H.R.918, Fairbanks, Alaska.
3 May 91:	House Mining Subcomm: Field hearing on H.R.918, Santa Fe, New Mexico.
13 Apr 91:	House Mining Subcomm: Field hearing on H.R.918, Reno, Nevada.
12 Apr 91:	House Mining Subcomm: Field hearing on H.R.918, Denver, Colorado.
9 Apr 91:	S.785, "Minerals Policy Review Commission Act of 1991" introduced (Burns + 8)(drafted by Northwest Mining Association).
20 Feb 91:	S.433, "Mining Law Reform Act of 1991," introduced (Bumpers +6).
6 Feb 91:	H.R.918, "Mineral Exploration and Development Act of 1991", introduced (Rahall +2).

** 1990 **

22 Oct 90:	Senate floor vote defeats patenting moratorium, 50-48, on germaneness challenge (House later recedes in conference).
16 Oct 90:	Senate Appropriations Comm votes 17-10 to add moratorium on patenting of claims to Chairman's mark.
13 Sep 90:	Senate Mining Subcomm: hearing on royalties.
6 Sep 90:	House Mining Subcomm: hearing on H.R.3866.
24 Jul 90:	Regula Rider for moratorium on patenting of claims included in H.R.5769, Interior Appropriations.
23 Jan 90:	H.R.3866, "Mineral Exploration and Development Act of 1990," introduced (Rahall +).
6 Jun 89:	S.1126, "Mining Law of 1989," introduced (Bumpers +).
18 Oct 88:	Bumpers places 1872 Reform statement in Cong. Record.
22 Dec 87:	Federal Onshore Oil and Gas Leasing Reform Act of 1987 enacted in Omnibus Budget Reconciliation Act.
23 Jun 87:	House Mining Subcomm. holds oversight hearing on 1872.
1986:	Reagan Administration patents 82,000 acres of oil shale claims for $2.50 per acre.

* * *

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON, D.C. 20240

In Reply Refer To:
3800 (660)

June 4, 1992

Instruction Memorandum No. 92-245
Expires: 9/30/92

To: All Field Offices

From: Director

Subject: Requests for Minerals Statistical Information

PROGRAM AREA: Mining Law Administration

ISSUE: Numerous requests for statistical information in the Mining Law Administration program are proving to be burdensome and duplicative to the field office.

BACKGROUND: Field offices are required from time-to-time to submit statistical and other information in the Mining Law Administration program to the Washington Office (WO). This information covers mining claims, mineral patent applications, patents, acreage, etc. Frequently, the field offices are requested to provide the very same information to a variety of requesters, both within and out of the Government.

POLICY: Effective immediately, requests for information related to the Mining Law Administration program that have previously been provided or are routinely provided to the WO should now be referred to the WO for action. This will allow for responses to be made on a national level and will ensure completeness of response. For example, requests for information from the semi-annual mineral patent application status reports should be referred to the WO for response.

TIMEFRAMES: This policy takes effect immediately upon receipt of the instruction.

BUDGET IMPLICATIONS: None.

MANUAL/HANDBOOK SECTIONS: None.

COORDINATION: Usual contacts.

CONTACTS: Paul Politzer WO-660 (FTS 202-208-7722) or Bill Lee WO-660 (FTS 202-208-4147).

A. A. Sokoloski

Adam A. Sokoloski
Acting Assistant Director
Energy and Mineral Resources

Mr. LEHMAN. Let me, without getting into cinematography here—I will explain cinematography to you later, Nick—he is wearing shoes.

Let me, just before I get to some general questions, get into some of the things you brought up, Phil.

With respect to the process that was set up at BLM to fast track these patents, was there public input into that decision?

Mr. HOCKER. To the best we have been able to discover, we have no record of it having been approved by the Director. It certainly was not known or approved by the Secretary so far as we know. There was no knowledge of it.

In fact, many people in the mining industry said, well, how did Barrick manage to do this so quickly when it became known around the community that these patents were about to be eligible to be signed? You know, I have been waiting for my patents to go through for 2 or 3 years, they said. What did Barrick do right?

So it is not only not widely known to the public. It is not even widely known in this room.

Mr. LEHMAN. Was it noticed in the *Federal Register* as a change in the procedures?

Mr. HOCKER. Categorically, we are not aware of it having been. We have asked questions like that of people who would have pointed it out to us had it been, I believe. I cannot say it has not.

Mr. LEHMAN. Why do you think the Goldstrike mine was picked as a test here?

Mr. HOCKER. I don't know that it was specifically picked as a test. The opportunity was available, and they availed themselves of it. I don't have specific information on that. I believe there may be people in the room who have.

Mr. LEHMAN. So then you are quite satisfied with Secretary Babbitt's rescinding of the authority of BLM to issue patents at the present time?

Mr. HOCKER. I believe it is the best he can do under the circumstances. Obviously, the Secretary can't burden himself with reviewing each patent application indefinitely. I hope what he intends to do is both put in place a review of the patenting process but also to require BLM to assemble better information on what is going on.

The data that we have, we believe, are the best that anyone has as to the value of public property that is currently at stake in this process. Yet, I say that knowing that these are not terribly good data on which to base a decision.

Mr. LEHMAN. Probably the main thrust of the argument against moving forward with this legislation is the economic impact of it. I am sure that is what we are going to hear in a few minutes and what several Members have talked about earlier. That impact coming down, basically, to potential loss of jobs in the industry which is very sensitive to all of us here and to a lack of competitive ability as far as this nation is concerned in this field as well. I would like to open it up, give you an opportunity to respond to that central argument.

Mr. HOCKER. Why don't I speak for a moment? Perhaps others on the panel will have something they would like to offer.

I think Mrs. Vucanovich said it well a few minutes ago. She said metals are important to society. And it is my belief that metals are, in general, underpriced right now and that the costs of extracting metals in a way that is sustainable—which may be the best way in which to think about this—are costs that can easily be borne by the users of those materials.

Right now, we have an example. It is not the only one in the country, by any means. We have a situation where only a fraction of the total cost of an industry is being borne by the industry itself. A large part of that cost is not lost, doesn't go away. It is just being shifted to other parties.

The Summitville mine is an example. The company made substantial profits for a short term or at least they took a lot of cash out. Right now, the EPA is being forced to step in under Superfund. The company has gone bankrupt. We are paying about $33,000 a day simply to hold the status quo at that site, to operate facilities—by the way, hiring the same people who were running the mine a few months ago but now their paychecks come from Uncle Sam—in order to control and prevent the further catastrophic spread of the problem which they created.

Those are costs which the whole public is bearing. Galactic is not bearing those costs. Our goal is not to impose an unfair burden on the industry but to make sure the costs of extracting these materials are borne by the companies that extract them and, ultimately, their users.

Mr. LEHMAN. Anyone else care to comment?

Ms. HOHMANN. I would add to that.

Again, our reading of the land-use planning and unsuitability provisions of this bill may not mean that mines are not permitted in every case. It may mean that they are permitted with additional environmental safeguards. The industry is moving forward and developing technology that, for instance, deals better with accident contingency, better liners, better leak detection technology. We think, as we move the industry in that direction, additional jobs are going to be created.

I would also concur with Secretary Babbitt's notion that reclamation jobs are indeed high-paying, real jobs. And I would disagree with Congressman Young on that.

Mr. PARKS. Mr. Chairman, you know, I would like to respond to it, too, with an example from the mine in my backyard, the Mineral Hill mine in Cherry, Montana, about five miles from where I live. It is located on private land and has had relatively little involvement with the Federal permitting process.

When it was initially permitted, there was a little slop-over onto Federal land for some of the tailings operation. The Forest Service was involved in the permitting process. But the ore body itself is all on long-since-impacted land.

It is a good operation. It is one that, in fact, meets, I think, all the criteria that would be imposed upon any operation in this country under H.R. 322. And it is in business.

The question I have is, how fair is it of the investors in the Mineral Hill mine to compel them to meet these standards and put them at a competitive disadvantage effectively against a mine operating under a Federal subsidy? We don't think it is particularly

fair, and I would hope that the owners of that property would also think about that.

Mr. LEHMAN. Thank you.

Let me move on to one other area here before I surrender the time.

I have a concern about the citizen suit provisions in the bill, and based on my own experience where, not in the mining area but other environmental areas, I have been party to negotiating agreements, if you will, among different entities. One comes to mind where we had 17 environmental organizations that agreed to a policy. We got the Forest Service aboard, the timber industries aboard and thought we had a real good deal until we found out we had to have all 20 environmental organizations because 3 went out and sued us and stopped the whole thing.

I get real concerned that we will make a lot of work for lawyers here and make it possible to stop anything that could possibly happen because of the extension of standing.

I would like to get things solved and like to have people get on with their lives, not have this expensive morass of litigation that I don't think does anybody any good. I would like to hear your response to that.

Mr. HOCKER. I am not familiar with the negotiation which you are speaking to. I am not sure it was citizens that was actually the vehicle involved or in EPA litigation or some other form of law.

But I think that the problem of what is known in the sort of science of regulatory affairs as captive regulators is one which has been with us as long as there has been government regulation.

The reason the citizens' suit was invented in 1970 and the reason it has become basically a standard fixture of virtually every comprehensive piece of environmental legislation since is the concern that regulatory bureaucracies tend over time to get very cozy with the regulated industry. Mining industry is a very close example of that. In fact, the breakdown of the Colorado regulatory program in Summitville, unfortunately, gives us an example of a program which had much to be said for it but where, frankly, a lack of vigilance led to lack of action.

I think that we have to accept some inefficiencies in litigation as a price of having some scrutiny to keep the regulators honest, to be quite honest.

Mr. LEHMAN. I guess my concern is that saying that the regulators were too cozy with the regulated is another way of saying I didn't get my way; therefore, that is the reason.

Mr. HOCKER. Well, when you look at the result which has come out there, I don't think that it is a question of one party saying they didn't get their way unless their way was to have clearer violations of Clean Water Act standards because the operation was allowed to go ahead without adequate scrutiny.

I am not sure whether there is a simple answer to this. I do think that eliminating citizen suit provisions will lead to, frankly, over time, abuses which will be worse than the problems that might arise with citizens' suits.

Mr. LEHMAN. Thank you very much.

Mrs. Vucanovich.

Mrs. VUCANOVICH. I ask unanimous consent to include the report from the Colorado School of Mines on dealing with the issues of economic analyses of the Mineral Exploration and Development Act of 1993.

Mr. LEHMAN. Without objection.

Mrs. VUCANOVICH. Thank you.

[The information follows:]

AN ECONOMIC ANALYSIS OF THE MINERAL EXPLORATION AND DEVELOPMENT ACT OF 1993

prepared for:

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Governmental Affairs
ASARCO, Inc.
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I would like to thank Lisa McDonald, Rod Eggert, Gail Vallance and Allan Casey for their assistance in preparing this report.

INTRODUCTION

The General Mining Law of 1872 evokes much emotional and substantive debate regarding its effectiveness in regulating the mining activities of the domestic mining industry. There are numerous stories told regarding the abuse of the Mining Law, particularly the patenting provisions of the law. Over the years there have been several bills presented in Congress to revise and/or replace the law with a more restrictive alternative. During the opening session of the 103rd Congress the "Mineral Exploration and Development Act of 1993" (HR 322) was introduced in the House by Representative Nick Joe Rahall (D-WV). Senator Dale Bumpers (D-AR) also introduced an alternative to the General Mining Law entitled "Mineral Exploration and Development Act of 1993" (S 257) to the Senate.

At the request of ASARCO, Inc. the Environmental Policy Center at the Colorado School of Mines was asked to perform an independent economic analysis of the proposals. The analysis performed by the Center is divided into two phases. The first phase focuses on a qualitative assessment of the impacts of the proposals. This will then be followed by a quantitative analysis of the issues identified in the qualitative phase. Due to the time constraints on the project, phase two has yet to be completed. The focus of this analysis is H.R. 322, the bill introduced by Congressman Rahall.[1]

As part of his introductory remarks, Congressman Rahall

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[1]A similar analysis of S. 257 is being prepared and is available from the author.

stressed eight points that are the focus of H.R. 322. These eight points are:

- maintain the right of self-initiation,
- guarantee secure tenure for claims,
- eliminate different treatment for different types of claims and the rule of discovery,
- eliminate the patenting provision,
- impose "reasonable" diligence requirements,
- introduce surface rental fees and production royalties,
- specify reclamation requirements, and
- integrate mining activities into the multiple use framework for land use planning.

Each of these points generates economic costs and benefits, as well as noneconomic impacts. It is important to specifically identify these impacts to determine the desirability of mining law reform. The qualitative assessment of H.R. 322 will be based on the relevant natural resources and environmental economics theory and applied studies.

ECONOMIC IMPACTS OF H.R. 322

The debate regarding the reform of the mining law has taken many forms over the years, however, some consistent themes have arisen. Michael McCloskey of the Sierra Club summarized[2] the prevailing themes as: lack of adequate return to the US Treasury; fraudulent acquisition of mineral lands; loss of public control of patented lands; and role of mining as the "highest use of the land". H.R. 322 addresses each of these issues, as well as several others, to varying degrees. This analysis of H.R. 322 will first address specific issues in the order that they are

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[2]See McCloskey, Michael, 1989, "The Mining Law of 1872" in The Mining Law of 1872: A Legal and Historical Analysis, National Legal Center for the Public Interest, Washington DC.

presented in the bill. This will be followed by an overall assessment of the general impacts of the bill.

Issue #1

Section 103(h) states that "the boundaries of a mining claim located under this Act shall extend vertically downward." Although the surface area that a mining claim covers is larger under H.R. 322 than under the General Mining Law, extralateral claims are no longer covered. Due to the proposed change, a mining firm no longer has rights to follow a vein, thereby, possibly reducing the ability to mine a substantial portion of the discovery making the mine less economic.

Issue #2

Section 104 of H.R. 322 proposes a "rental fee" on mining claims. Such a rental fee would increase the marginal cost of production, thereby, shifting the supply curve resulting in a higher price and a lower quantity for the final good. Also, the rental fees defined in section 104(a)(1) of the Act provide lower bound values for the fees. It is unclear whether or not the fees will be substantially higher, under what conditions would the fees be set, would the fees vary by location depending on the alternative uses of the land. The uncertainty regarding the rental fees makes it difficult to determine the economic value of the property.

Issue #3

The next issue that affects the economic viability of a mining project regards the payment of the minimum rental under

section 104(c). This section of the Act states that when the "claim holder is prevented from making diligent development expenditures under subsection (b) by reason of - (i) any judicial proceeding or administrative action...". It is unclear whether or not "administrative action" includes activities such as preparing an Environmental Impact Statement under the requirements of the National Environmental Policy Act of 1969 or preparing a Plan of Operations in compliance with the Federal Land Policy and Management Act of 1976. During the permitting phase of a project the firm is spending a significant amount of money without any income from the project.

Issue #4

Under section 201(b)(2)(B) the Act states that the firm will not be allowed to conduct mineral activities related to exploration until an "adequate financial guarantee is established". This bond is required even though the firm is not required to submit a plan of operations for the exploration activity in this section due to the "minimal and readily reclaimable disturbance".

Issue #5

The mining permit application requirements outlined in section 201(d) includes the requirement that the firm submit a complete history of all plans of operations held by the claim holder and all project partners. This requirement is then used to determine whether or not the applicant has any outstanding violations which could then result in a denial of the application

under section 201(g). The uncertainty involved regarding the magnitude of the violation required to cause an application to be denied adds to the risk associated with developing the property. It is also unclear at what level the decision will be made. A possible scenario could be a firm that has acquired a property that turns out to be in violation of the Comprehensive Environmental Response, Compensation, and Liability Act or its amendments. Under CERCLA's joint and several liability requirements, the firm would be in violation of an applicable regulation at the site without ever having operated the property. The question then is, would this be grounds for denying an application at another site?

Issue #6

One of the more important issues regarding the economic impacts of the proposed Act relates to the requirements under section 201(h)(2). This section requires that the firm commence operations with <u>one</u> year of the time the plan of operations is approved. Due to the cyclical nature of the resource industry it is often economically desirable to delay production until market conditions are more conducive to economic success. For example, the Greens Creek mine in southeast Alaska completed the permitting requirements based upon an EIS in 1983, however, the mineral prices did not recover to the point of making the property economically viable until 1989. Had there been a requirement to modify the plan of operations production could have been delayed to the point that the property would not have

been developed.[3]

Issue #7

The bond requirements under section 201(l)(1) imply that the amount of the bond be based upon the "worst case scenario" regardless of the probability of occurrence. Once the value of the bond is determined, the review process provides an opportunity to modify the amount of the bond. This results in an increased level of uncertainty in planning the mining project, thereby, increasing the riskiness of the project. Also, the requirement that the release of the bond be delayed until the public has had an opportunity to comment will impact other projects that the firm could be pursuing once the bond is released.

Subsection (l)(5)(A) states that "After the operator has completed the backfilling ...". Does this imply that all mines will be backfilled? Elsewhere in the Act it states that under certain reclamation plans backfilling will not be required. What is the impact of this on releasing the financial assurance?

Issue #8

The reclamation requirements under section 201(m) specify that the lands be restored to a "condition capable of supporting the use to which such lands were capable of supporting prior to surface disturbance, or other beneficial uses, provided such other uses are not inconsistent with applicable land use plans".

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[3]Development of the Greens Creek mine was delayed for other reasons as well, however, the low metals price was one of the most important reasons given for the delay.

This leads to two important questions. First, who determines what is a beneficial use? Second, if an area does not have a land use plan, is the firm required to delay application until such a plan is developed to determine what is a beneficial use? The time delays associated with each of these issues are by no means trivial.

Issue #9

Section 201(n)(1)(D) states that "where surface of underground water sources for domestic or agricultural use have been diminished, ..., such water resource shall be restored or replaced." Under the prior appropriations doctrine if the mine has the senior rights must the operator still restore or replace the water sources?

Issue #10

Does the reference to "practicable" in section 201(n)(5)(C) refer to economically or technically practicable? Would the firm or authorized agent be able to evaluate the tradeoff between the cost of performing the reclamation and the technical feasibility of the process?

Issue #11

The reclamation requirements specified under section 201(n)(10) may possibly result in a moving target for the firm. Since the requirements specified by the Director of the Fish and Wildlife Service will need to be site specific it is important that a methodology for determining the requirements be consistent from site to site so as to minimize the cost of achieving the

desired level of fish and wildlife habitat.

Issue #12

The additional standards that the Secretary may establish by regulation under section 201(o) may be inefficient if they are generic to the entire lands open to development. The absorptive capacity of the environment needs to be considered. For example, cyanide leach mining may be appropriate in very dry climates, whereas, it's use would be more restricted in a humid climate. The cost of meeting generic rules that may not be relevant to the proposed project increases the economic burden on the firm.

Issue #13

If a violation occurs section 202(b)(3)(A) states that the Secretary "shall determine the steps necessary to abate the violation in the expeditious manner possible, and shall include the necessary measures in the order. The Secretary shall require appropriate financial assurances to insure that the abatement obligations are met." Due to the remote location of many of the mine sites it is likely that the authorized agent of the Secretary will not have the expertise to determine the necessary steps to be taken, thereby, possibly delaying action that may make matters worse. Due to the penalties associated with the violation the operator has an incentive to act as expeditiously and effectively as possible. With the operator able to take action immediately it is often possible to minimize the impact of the violation and to do so at a minimum cost.

Issue #14

The role of the public is prevalent throughout the Act. One of the areas that may result in significant uncertainty to the operator during the project planning phase is the citizen suit provisions in section 202(e). This section states that "... any person having an interest which is or may be adversely affected may commence a civil action on his or her own behalf to compel compliance...". The court has recognized the validity of nonuse values from natural assets in natural resource damage assessment cases under CERCLA liability.[4] The court ruling in this case has opened the possibility that a citizen may sue based upon damages to their perceived option value or existence value[5] and if not halt the proposed project at least significantly delay the process at substantial costs.

Issue #15

The user fees specified in section 402 provide another source of uncertainty as well as an additional cost. This section states that the Secretaries of Interior and Agriculture are authorized to "establish and collect from persons subject to the requirements of this Act such user fees as may be necessary to reimburse the United States for a portion of the expenses

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[4]Ohio v. The United States Department of the Interior, 880 F. 2nd 432 (D.C. Cir. 1989)

[5]Option value is the value an individual places on preserving the opportunity to use the resource at some time in the future. Existence value is the value individuals place on the knowledge that a given resource exists even if they have no intention of ever using that resource.

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incurred in administering such requirements." Are these fees to be set nationally or will they be based upon the estimates of the local authorizing agent? Who will determine what portion of the expenses will be billed to the operator? If the operator is to pay the salary of individuals involved in the regulatory process, does this include the inspectors and enforcement officials as well? Once again, this results in a great deal of uncertainty in the planning process which increases the cost of a given project.

Issue #16

If the regulations stipulated in section 403 are <u>not</u> promulgated in one year and the rest of the Act becomes effective how will this affect the approval of plans of operations? Since the plans of operation must be compatible with the land use plans and other regulations under title II of the Act any delay in promulgating the regulations may have a significant impact on the cost of permitting a project.

Issue #17

The requirement of section 405(b)(2) that a plan of operation for a project in existence prior to the effective date of this Act shall be valid for five years after which it will need to meet the requirements of title II implies that the operation may need to retrofit the production process at significant cost. Changing the design after the mine has been constructed and operating for a number of years would impose added costs that would not have been anticipated during the project evaluation phase, thereby, affecting the profitability of

the project. These arguments also apply to the requirements to modify a notice after two years.

Issue #18

Perhaps the most controversial issue affecting the economic viability of the hardrock mining sector is the implementation of a royalty as proposed in section 410. A quantitative assessment of the impacts of various royalty levels has been conducted elsewhere.[6] Qualitatively, economic theory clearly states that a royalty imposed on gross income will affect the optimal level of production. Not only will the royalty affect the quantity produced in each time period it will also change the time path of production, in effect tilting production toward the present.[7] The impact of this may be that the firm will overinvest in capital equipment and increase production costs.

There are also four issues of a general nature that will have a significant impact on the cost of doing business in the mining industry that are evident throughout the Act. These issues are:

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[6]See for example Dobra, John L. and Paul R. Thomas, The U.S. Gold Industry, University of Nevada, Reno, 1991 and Davis, Graham & Stubbs and Coopers & Lybrand, Economic Impact of Mining Law Reform, Denver, Colorado, January 28, 1992.

[7]The literature in this area is quite extensive. Representative of this literature is Garnaut, Ross and A.C. Ross, Taxation of Mineral Rents, Clarendon Press, 1983; Kumar, Raj, "Taxation for a Cyclical Industry", Resources Policy, June 1991; and Burness, H.S., "On the Taxation of Nonreplenishable Natural Resources", Journal of Environmental Economics and Management, vol 3, 1976.

- relationship between the various agencies and their responsibilities under various legislative acts,
- the limits on the lands open to location,
- the impact on the timing of a project, and
- the technology requirements in the reclamation section.

The cost not only to the firm but also to society associated with each of these issues needs to be considered in order to develop an efficient and effective Act.

The firm is often placed in the position of needing to coordinate the various agencies involved in the permitting process, particularly when an Environmental Impact Statement needs to be prepared. An example of possible conflict is highlighted in section 204(e)(2)(D) where the Act states that an area shall be determined to be unsuitable for mineral development when "such mineral activities could adversely affect lands which include wetlands if mineral activities would result in loss of wetland values". Would it be the responsibility of the U.S. Corps of Engineers to determine that wetlands would be affected as it is now under a 404 permit or would the operator be able to secure a 404 permit but still not be able to develop the property because the BLM or Forest Service determines the "wetlands values" would be affected? Once again, this provides an added dimension of uncertainty and the associated cost to the firm.

The economic impact of the second point regarding the limits on the lands open to location has obvious results. It is important to determine exactly how much land will be set aside due to the various wilderness designations and other aspects of the Act.

Under the current regulatory system it is not uncommon for a mining project to take two years to receive a permit to operate. The environmental requirements of NEPA, the Clean Water Act, Clean Air Act, etc. along with the increasing requirements associated with state and local legislation result in significant time delays in developing a project but address the environmental concerns of society.[8] The Act is unclear as to whether or not these environmental reports will be sufficient for the purposes of the new legislation. If not, will the added cost result in an increased level of environmental protection?

The final issue of concern is the requirement to use the "best technology currently available" or the "best available demonstrated control technology". The requirement that an operator use a certain technology often does not result in an efficient solution as is proven in the environmental economics literature. Forcing a given technology removes the incentive for innovation in the treatment of waste or the methods used for remediation and reclamation. Once a technology is chosen as "best" it becomes very difficult to adopt new technologies as the dynamics of the market provide new and better solutions for environmental protection.

It is important that the economic tradeoffs be examined in determining the desirability of replacing an existing regulatory

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[8]Two examples of state and local legislation are: the Environmental Impact Report required under the California Environmental Quality Act and the Large Mine Permit required by the City and Borough of Juneau, Alaska.

system with an alternative system. We must be relatively certain that we are curing the problems that were perceived to exist in the first place. The issues raised by McCloskey and the points made by Congressman Rahall when introducing the Act were interesting and thought-provoking, however, we must consider all dimensions of the issues and not react based upon problems that have been resolved elsewhere.

Mrs. VUCANOVICH. I wanted to ask Mr. Hocker a couple of questions.

We keep referring to the Summitville issue. Isn't the real story the breakdown of enforcement by the Colorado Mine Land Reclamation Board and the U.S. Forest Service?

The State's program is generally regarded as one of the best in the West or the nation. I would say not as good as Nevada's, but it is very good.

But you have to give the board funding to do the job. And miners pay into the revolving account to pay for the Department of Environmental Protection inspection and enforcement.

Now, our Nevada Department of Environmental Protection doesn't need an appropriation from the legislature. Isn't that one of the big problems, that it was entirely up to the Colorado Mine Land Reclamation Board and the Forest Service to be enforcing the requirements?

Mr. HOCKER. That is certainly part of the problem, but I think we need to generalize for that specific case. The problem of State regulatory bodies being pressured and influenceed by concentrated economic forces is one long known in the mining industry and others.

In the coal industry that same problem existed. There were State regulatory programs in place before the act was passed, but it was the ability of the companies to whipsaw States against each other. There was the ability of companies to bring heavy pressure to bear to reduce the level of regulation and inspection and enforcement that was employed, and the States were less well equipped to resist those very powerful forces.

Mrs. VUCANOVICH. Do you feel that is the case in Summitville? Is that your analysis of what happened there or what is happening there?

Mr. HOCKER. I don't have the final word on Summitville, and we are cooperating, the Mineral Policy Center, with several other companies in a very well-intended effort to try and get the better final word.

But taking your premise that the problem was primarily one of a breakdown of enforcement, my point is that if that is the case, then we have to recognize that this is not a new problem, and that the only way to really cure that problem is to put baseline requirements for State programs in place so that those strong economic and political forces that companies can bring to bear have something in place to offset them, so that the State regulators can say, Well, it is true that this mine is going to bring a great deal of impact, favorable, for a while, to this community, but we must keep a certain level scrutiny on it.

Mrs. VUCANOVICH. I think you need to back up those facts. I think that is an assumption that maybe isn't accurate. But in any event, I think that you need to point out that they are responsible for doing the job, and didn't.

To change the subject a little bit, you brought up the issue of the fast-tracking mineral patents, but the only part, when we are talking about the Barrick issue, is that the only thing that was fast tracked, was the mineral exam on the ground, certainly not the paperwork exercise. The first have final certificate issues before the

mineral exam is even prepared. I think implying that it fast tracked everything just isn't so.

Mr. HOCKER. If I may, I am not sure that is entirely correct. We do not have any knowledge of a fast-track process for the first half, comparable——

Mrs. VUCANOVICH. But you are making the assumption right away that it was fast tracked. You are not giving any benefit of the doubt.

Mr. HOCKER. I don't believe I ever made any such statement. But if I may, just for the record, the total time elapsed between Barrick's initial filing of their applications and their current status of being, they believe, to the best of my knowledge, eligible for issuance, is——

Mrs. VUCANOVICH. It is my understanding they filed for a mineral survey 2 years ago.

Mr. HOCKER. I am sorry. I don't seem to be able to put my fingers on a calendar. But I believe that the initial applications for patent were nowhere near that long ago. Excuse me one moment.

Excuse me for the delay. It is our information that the applications for patent were initially filed in March and April of 1992 for these claims. That is what we have been told by the Bureau of Land Management.

Mrs. VUCANOVICH. We are going to have a couple of votes here, so I am not going to question that. We will hear from our industry people who will be testifying. There are just a couple of things that I am concerned about.

For one thing, we are changing the subject a little bit and talking about the bill, Section 202. Doesn't the grading standard in Section 202 virtually preclude open-pit mining and absolutely preclude mining methods which will cause the formation of a glory hole by not granting a recognizable property right, by imposing rentals and a high open-ended royalty, by imposing expensive environmental studies on exploration and by conditioning mining on land-use plans, unsuitability studies, and an expensive applicant violator system? Isn't this bill really looking to remove the public lands from the mineral base?

That is the conclusion that I draw from this bill. Is that not a correct assumption?

Mr. HOCKER. I am very glad that you asked the question about the grading standards, because I think that demonstrates the care and the flexibility that has gone into drafting this bill by Chairman Rahall, former Chairman Rahall and his staff.

There are waivers provided under appropriate circumstances. I frankly think that the waivers are more liberal than is appropriate. And I would prefer to see them narrowed down. But there is provision made for responding to specific circumstances and to allow flexibility in the application of the standards.

Mrs. VUCANOVICH. You didn't answer my question, though. Don't you believe all of these requirements are really looking to remove the public lands from the Nation's mineral base?

Mr. HOCKER. Mrs. Vucanovich, I think Secretary Babbitt put it well this morning, and that is why I responded the way I did. I think if we look line by line at what this bill does and look at the actual way the bill will work as opposed to dealing in ideological

positions, that we will find that the industry cannot only survive and prosper but in fact that it will be better equipped to compete in an international sphere. I think if we can sit down and look at the bill line by line that way, we will all be the better for it.

I would say, to directly answer your question, no. But of course it is hard for that answer to be satisfactory to you, and it is frankly hard for your view to be satisfactory to me. I think that we may both do better if we look at it line by line and look at the actual impact and application of the provisions.

Mrs. VUCANOVICH. Well, I hope that we have an opportunity to do just that. I think we need to do that.

I am going to yield back the balance of my time. I think there are a few others who have some questions, and we do have a vote.

Mr. LEHMAN. Thank you very much.

Mr. Rahall.

Mr. RAHALL. Thank you, Mr. Chairman.

Let me respond to the gentlelady from Nevada. "The requirement of subparagraph (a) shall not apply with respect to an open-pit mine if the Secretary finds such open-pit or partially backfilled pit would not pose a threat to the public health or safety or have an adverse effect on the environment in terms of surface or groundwater pollution."

So I think Phil answered that rather correctly. We are pretty liberal with our requirements in this regard.

Let me ask the panel a question with regard to the variance provision in the bill. In last year's bill we had variance provisions applicable to existing operations once they are required to come into compliance with requirements of Title II. The purpose of this variance was to recognize, for example, that nobody expects to require the complete backfilling of the Bingham pit.

However, there was a concern that the variance could become the rule rather than the exception to the rule. That was the reason we did not include it in this year's bill and chose to leave it out, in recognition of the continued need for some type of tightly drafted variance provision.

What would your recommendations be in this regard?

Mr. HOCKER. If I may lead off, others may have suggestions they would like to make. It is my understanding that the distinction between different technology standards that is applied to different levels of operations provides substantial flexibility toward addressing the problem of existing operations.

I don't have a final answer on that, but I think that is an opportunity to recognize the needs of ongoing operations without opening up, frankly, a bag of worms at that we might not be able to close again.

Mr. RAHALL. Let me turn then to one other area. Diligent development seems to be a major point of difference between this panel and what is in the bill. What are your concerns in regard to diligence development? Are you favoring a flat-out fee in lieu of allowing for any type of diligence credits as are proposed in H.R. 322?

Ms. HOHMANN. The Sierra Club favors an outright fee. I think what you have done with escalating the fee over time is an adequate discouragement towards speculating. In other words, that increase of fee ought to get folks producing or get out. And part of

the purpose of this bill is to expedite swift, responsible mineral development.

I don't think that we are in an era any longer where we need to have diligence on the land. What that creates is a situation where there is a lot of small destruction on the Federal lands, and it is just a small scarring that a cumulative impact is beginning to really, I think, get at us.

So I would favor just complete deletion of any due diligence in this bill.

Mr. HOCKER. Mr. Rahall, throughout the philosophy of H.R. 322 I think there is evidence that in some ways some of the lessons of the Reaganomics are still being built into what we are thinking, the good lessons, because throughout the philosophy the bill is taking the approach of involving the government in mining operations on public lands only to the extent that it must be to protect the public interest.

So the elimination of the discovery test, which involves the government in making a fact finding of marketability, which really in many ways has no bearing on the government's responsibilities, I think is a very important progressive step in H.R. 322 and in H.R. 918 over current law.

I think that then saying that the government has an interest in how a miner operates on a claimed piece of property, and that the government in effect will subsidize a miner who goes out and excavates as opposed to one who simply goes to the Vancouver Stock Exchange, is involving the government in business and marketing decisions in a way that is a conflict with the very progressive market philosophy of other parts of the bill.

So I would argue that the rental or claim holding, depending on which term you want to use, provisions simply be set to compensate the government for the opportunity cost, if you will, of allowing that mineral property to be tied up over time by a miner.

I agree with what Ms. Hohmann said about the very attractive feature of these progressively escalating rates. But I think once the public has been compensated for letting miner X as opposed to miner Y control that mineral property for a period of time, what he or she with that property beyond that point is not our business.

And the diligent development subsidy in effect puts the government in the position of saying how it prefers the miner to use his resource once a claim has been located.

Mr. RAHALL. Thank you.

I am through with my questions, Mr. Chairman. I just want to compliment the whole panel for their testimonies and add one word in addition to the chronology of votes that were part of the Mineral Policy Center is testimony. It is a very good chronology, except I don't think it is quite as exhaustive as it could have been or as we actually conducted it.

I did have some hearings that were omitted from this chronology, some field hearings, oversight hearings, further investigations conducted by the subcommittee under my regime that are not completely listed in this chronology, and I would ask that that be made part of this record as well.

Mr. LEHMAN. There certainly will be no objection to that.

[The information follows:]

SUBCOMMITTEE ON MINING AND NATURAL RESOURCES
Hearings Relating to Hardrock Mining under the Mining Law of 1872
During the 100th through 101st Congresses

100th Congress

June 23, 1987 Hearing - Oversight
Mining Law of 1872

101st Congress

March 7, 1989 Hearing - Oversight
Mine Reclamation & Bonding Requirements

April 18, 1989 Hearing - Oversight
May 16, 1989 Hearing - Legislative
Abandoned Mine Lands

June 9, 1989 Field Hearing - Legislative
H.R. 737, to amend the Stock Raising Homestead Act, in Fresno, California

July 1, 1989 Field Hearing - Oversight (Colorado)
Legislative hearing on H.R. 2604, "Abandoned Minerals and Materials Mine Reclamation Fund" and Part II, field hearing, oversight on mine reclamation and bonding in Grand Junction, Colorado.

Oct. 7, 1989 Field Hearing - Oversight
Proposed Mining In Oregon Dunes
Eugene, Oregon

June 19, 1990 Oversight Hearing
Regulation of non-coal mining wastes.

September 6, 1990 Legislative Hearing
H.R. 3866, "Mineral Exploration and Development Act of 1990."

U.S. General Accounting Office Investigations Requested by Rep. Rahall involving matters relating to the Mining Law of 1872

1. *Abandoned Hardrock Mine Lands*
2. *Non-Mining Use of Patented Claims*
3. *Non-Mining Use of Unpatented Claims*
4. *Cyanide Leaching*
5. *Oregon Dunes*

Mr. LEHMAN. I, too, want to thank the panel for very good testimony today, and I will dismiss you now and let everybody know we have this vote, then 4 five-minute votes, then it will take us a few minutes to get back here. So we will reconvene the hearing at exactly 2:00 o'clock and hear from the next panel.

Mr. HOCKER. Thank you, Mr. Chairman. We appreciate the opportunity.

[Whereupon, at 1:15 p.m., the subcommittee was recessed, to reconvene at 2:00 p.m., this same day.]

PANEL CONSISTING OF RUSSELL FIELDS, DIRECTOR, NEVADA DEPARTMENT OF MINERALS, ON BEHALF OF HON. BOB MILLER, GOVERNOR OF NEVADA; DOUGLAS C. YEARLEY, CHAIRMAN, PRESIDENT AND CHIEF EXECUTIVE OFFICER, PHELPS DODGE CORPORATION, ON BEHALF OF THE AMERICAN MINING CONGRESS; DR. RICHARD H. DeVOTO, PRESIDENT, CANYON RESOURCES CORPORATION; JOHN L. DOBRA, PH.D., DIRECTOR, NATIONAL RESOURCES INDUSTRY INSTITUTE, AND ASSOCIATE PROFESSOR OF ECONOMICS, UNIVERSITY OF NEVADA; AND TERRY N. FISKE, VICE PRESIDENT AND GENERAL COUNSEL, USA, ECHO BAY MINES, ALSO ON BEHALF OF THE PRECIOUS METAL PRODUCERS

Mr. LEHMAN. We are probably going to have another vote but I think we should go ahead and get what we can get done now. We don't want to keep your guests waiting any longer.

We will hear from the next panel of witnesses. Mr. Russell Fields, Mr. Douglas Yearley, Mr. Richard DeVoto, Dr. John Dobra, and Mr. Terry Fiske.

We will begin with the Director of the Nevada Department of Minerals, Mr. Fields. We understand you are here at the request of the Governor. We appreciate that, and we look forward to your testimony.

We will put everyone's entire statements and other materials they have in the record, without objection. I ask you to summarize, and we will proceed.

Mr. Fields.

STATEMENT OF RUSSELL FIELDS

Mr. FIELDS. Thank you very much, Mr. Chairman, Members of the committee.

I am Russ Fields. I am the Director of the Nevada Department of Minerals. My testimony today, as the Chairman mentioned, is on behalf of Governor Bob Miller. Governor Miller is very concerned about the Mining Law issue. It is a very important issue for our State.

With the discovery and development of silver mines in Nevada in 1859, Nevada stepped to the forefront of hard-rock mining in this Nation, and it has through the years pretty much remained in that position. Today we lead the Nation in the production of gold and silver, and also some other minerals such as barite and gypsum and lithium carbonate.

In 1872, William Stewart, Senator from the State of Nevada was instrumental in getting the 1872 Mining Law passed. So we have a long history that covers this 1872 law.

Our position and production here in Nevada is number one in the Nation, as I said. In terms of gold, that is our most important commodity, and that industry employs some 13,000 people directly, with another 40,000 in direct jobs related to the industry. And as has been mentioned before, they are high-paying jobs, about $37,000 per year.

I would like to call your attention to how important these jobs are to some of our rural communities such as Elko, Nevada. Elko was recently named the best little city in America in Norman Clampton's book, *The 100 Best Small Towns in America.* Truly this is partly because of mining in the area. Of the 16,580 population of Elko, about 5,400 of those people are directly in the mining business; that is, 33 percent.

We appreciate very much Chairman Rahall's efforts to bring this subcommittee in past years out to the communities that would be affected by the bill. He and Mrs. Vucanovich came to Reno, Nevada, in 1991 and conducted a field hearing there.

In fact, I would like to tell the committee that both Mrs. Vucanovich and Chairman Rahall at that time, together with their staffs and myself and a small miner, went down a small mine, approximately 100 feet, down a vertical ladder and looked at the working of a very, very small mine. And indeed, as was stated earlier, Mr. Rahall does wear miner's boots, not tassled shoes.

Mr. LEHMAN. Was he in the dark?

Mr. FIELDS. We had a head lamp for him on that particular occasion.

In fact, Governor Miller testified at that hearing in Reno and pointed out his opposition to various aspects of one of the predecessor bills to H.R. 322.

We have some continuing concerns in the State of Nevada because so much of our production is coming from public lands. We estimate—and this is based on a recent, as early as two week ago, survey of all of our mining operators—we estimate that 58 percent of the hard-rock mineral production in the State is coming from public lands.

So you can see how important that is to us. It is particularly important for the future of our industry and our State because 87 percent of the lands in the State are managed in one form or the other by the Federal Government.

In that same survey that I mentioned that was conducted by our department, the department of minerals, we looked at what the industry thought the effect of an 8 percent gross value of production royalty would be on their future operations. And the response back to us—and it has been provided to the Governor—is that immediately the expectation would be a reduction in work force of 16 percent on all mines, and about 19 percent if you just look at the mines with 50 percent or more production from public lands. So I think the concern about potential lost direct mining jobs is something that the committee needs to be very, very aware of.

The Governor thinks that each of these lost jobs, of course, is a job that represents the primary source of income for a family, and I am sure the committee understands that as well.

Another immediate impact of the royalty that we believe would occur as a result of our survey of these operating mines is the near-

immediate negative response that exploration would have. Exploration on public lands, according to this survey, would fall by about 60 percent. In Nevada, that is a difference between $100 million expenditure and $40 million expenditure.

That, of course, leads one to the conclusion that the future of the industry would be gravely impacted by the loss of this exploration as a result of the higher costs brought on by the royalty.

Now, we as a State do not intend to enter the discussion or the argument, if you will, between industry and the proponents of high royalties. But I would like to offer to the committee the experience of Nevada. Nevada has had a net proceeds of mines tax since its constitution was first drafted in 1865. It has been changed and varied from time to time. In fact, most recently in 1989, a 5 percent capping on the net proceeds of mines tax was put into our constitution.

But we would be happy to work with the committee and any of its staff to look at how our net proceeds of mines tax is worked. It is fairly straightforward in that it starts with a gross value, there are allowable deductions in statute, arrive at a net, and then a percentage is applied to that net.

I realize we are not talking about a royalty in our net proceeds of mines. It is a tax. But I think the same concepts could apply. I am sure that our department of taxation would be available to your committee as well that could get into the real detail of how net proceeds work.

In addition to royalty, the Governor has specific comments on Title II of the bill. This is the section which addresses the environmental issues and the public's opportunity to have input during the operations of mining on public lands.

Both environmental protection and public involvement in the process are very valued and important parts of what should be the laws that govern mining. They are certainly in Nevada, and we support that wholeheartedly.

However, the approach in H.R. 322 is overly restrictive and unduly raises uncertainty in the business of mining. And I am wanting to stress very much this concern about uncertainty. If mines or mining exploration cannot have some assurance that what it finds to be able to mine under all the rules and conditions that exist at the time, then no one will invest the millions of dollars that are required to discover hard-rock mineral deposits.

The two things that raise the uncertainty, we think, are the current language regarding unsuitable reviews and the current language involving the opportunity for citizens' suits. As Chairman Lehman mentioned during the morning session, I think there are some very valid concerns about the citizens' suit provision which would provide the opportunity for citizen against citizen.

I don't think that is good policy in Federal law. I think that raises so much uncertainty, if that were a part of Federal law, that it would be very difficult to finance exploration and mining operations. And that is a concern of the governors, again looking at the future of this industry.

In Governor Miller's four years as Governor he has overseen the adoption of a reclamation law in Nevada and also some very strong tightening of the water pollution control regulations that govern

mining in our State. They are working well, and the reason they are working well is because they were put together by industry working in cooperation with the environmental community and State regulators. It was a collective effort, a lot of agreement in process, a lot of absolute fighting in the process, but now we think we have some very, very strong laws that govern mining, and we would hate to see a Federal bill set those aside in favor of new, untried regulations that are coming from the Federal level.

Mr. DeFazio mentioned this morning his desire to arrive at some threshold, if you will, for smaller miners. And I would like to extend that to explorationists, who should not be faced with the same degree of rigor in their permitting process. I am not saying they shouldn't have the same requirements for environmental protection, but perhaps an easier process that would shorten the amount of time required to get approval to go ahead and explore or to go ahead and mine a small mining operation that posed no chemical toxicity problem. We have those types of rules of Nevada and they seem to work very well.

Very quickly, a couple of other issues in Title II that the Governor is concerned with is the bonding for accident contingencies. We have reclamation performance bonding requirements in our State. In the three years that it has been in effect, we find that bonding is something that is difficult to obtain by even the strongest economies.

Commercial surety is difficult to obtain for mining reclamation. The thing you have to have to get bonding is very clear; what is called release criteria from the Federal Government, or the State government, in our case. What will it take in order to get the company off the hook, when is reclamation complete? So the accident contingency provision needs to be looked at very carefully.

Also, backfilling of pits is an area that we have some concerns with. We know that pits need to be left in a stable and safe condition, but in Nevada our backfilling requirement is there. But if an operator can demonstrate that it is not economically feasible to backfill a pit, it is not required. It is not a matter of waiver; it is just simply not required.

However, where it can be done, for example, adjacent pits, then it is required, but it has to be economically demonstrated one way or other.

In conclusion, Governor Miller suggests that H.R. 322 needs to be better modified to better recognize that properly regulated hardrock mining on the public lands can be of great benefit to both the State and the nation. We know that there are aspects of the 1872 Mining Law that need to be reformed.

In fact, reformation, when it is complete, will be welcome, because the uncertainty that has been created during this process over the last several years we think has led to the loss of a lot of exploration in our State. But we hope that whatever comes out of this reformation process is something that is reasonable and fair to all sides.

And again, I offer our assistance in any way possible to the committee, to its staff, to discuss things that have worked in our State, which I think can be held out as a reasonable model for the Nation.

Thank you.

[Prepared statement of Hon. Bob Miller, Governor of Nevada, follows:]

TESTIMONY ON

H.R. 322

HOUSE OF REPRESENTATIVES COMMITTEE ON NATURAL RESOURCES

SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES

BY BOB MILLER, GOVERNOR, STATE OF NEVADA

MARCH 11, 1993

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE, I APPRECIATE THE OPPORTUNITY TO TESTIFY ON H.R. 322, THE MINERAL EXPLORATION AND DEVELOPMENT ACT OF 1993.

WITH THE DISCOVERY AND DEVELOPMENT OF SILVER MINES BEGINNING IN 1859, NEVADA STEPPED TO THE FOREFRONT OF HARDROCK MINING IN THE UNITED STATES. IN FACT, THE VALUE OF THOSE SILVER MINES HELPED NEVADA TO BECOME A STATE IN 1865. MORE RECENTLY, OUR MINES HAVE LED THE NATION IN THE OUTPUT OF GOLD, SILVER, BARITE, MAGNESIUM AND MERCURY SINCE THE MID-1980'S. OTHER MINERAL COMMODITIES PRODUCED IN SIGNIFICANT QUANTITIES IN NEVADA ARE GYPSUM AND LITHIUM CARBONATE.

THE MINING INDUSTRY IN NEVADA EMPLOYS APPROXIMATELY 13,500 PEOPLE DIRECTLY AND ANOTHER 40,000 INDIRECTLY IN JOBS PROVIDING GOODS AND SERVICES TO THE INDUSTRY. THE MINING JOBS ARE THE HIGHEST PAYING OF ANY CATEGORY IN OUR STATE, WITH AN AVERAGE WAGE OF APPROXIMATELY $37,000 PER YEAR. MOST OF OUR RURAL COMMUNITIES ARE EXTREMELY DEPENDENT ON MINING FOR THEIR ECONOMIC BASE. FOR EXAMPLE, ELKO, NEVADA HAS A POPULATION OF 16,580 AND 5,400 OF THOSE PEOPLE OR 33%, ARE DIRECTLY EMPLOYED BY THE MINING INDUSTRY. AS AN ASIDE, ELKO WAS RECENTLY NAMED "BEST LITTLE CITY IN AMERICA" BY NORMAN CLAMPTON IN HIS BOOK <u>THE ONE HUNDRED BEST SMALL TOWNS IN AMERICA</u>.

WE BELIEVE THE BILL BEFORE YOU TODAY, H.R. 322, WOULD HAVE A NEGATIVE EFFECT ON THE FUTURE OF MINING IN NEVADA AND OTHER WESTERN STATES WITH SIGNIFICANT AMOUNTS OF PUBLIC DOMAIN LANDS WITHIN THEIR BORDERS. WE ARE OPPOSED TO THE BILL AS IT IS CURRENTLY WRITTEN.

A RECENT SURVEY CONDUCTED BY THE NEVADA DEPARTMENT OF MINERALS SHOWED THAT MORE THAN 58 PERCENT OF OUR MINE PRODUCTION CAME FROM PUBLIC LANDS IN 1992. THIS IS SOMEWHAT DISPROPORTIONATE TO THE STATE AS A WHOLE BECAUSE 87 PERCENT OF NEVADA LAND IS MANAGED BY THE FEDERAL GOVERNMENT. OUR ECONOMY RELIES HEAVILY ON THE ABILITY TO USE AND DEVELOP NATURAL RESOURCES ON THE PUBLIC LANDS.

IN THAT SAME SURVEY OF OPERATING MINES REPRESENTING NEARLY ALL THE PRODUCTION OF GOLD AND SILVER IN THE STATE, WE LEARNED THAT THE 8 PERCENT GROSS VALUE OF PRODUCTION ROYALTY FOUND IN THE BILL WOULD HAVE THE IMMEDIATE EFFECT IN THE FIRST YEAR OF REDUCING OVERALL MINING EMPLOYMENT BY 16 PERCENT. FOR THOSE MINES DERIVING HALF OR MORE OF THEIR PRODUCTION FROM PUBLIC LANDS SUBJECT TO THE PROPOSED ROYALTY, THE DECLINE IN EMPLOYMENT, ACCORDING TO THE SURVEY RESULTS, WOULD BE 19 PERCENT. BEYOND THE FIRST YEAR, EMPLOYMENT WOULD CONTINUE TO FALL AS MINE LIVES COME TO AN END SOONER THAN THEY WOULD HAVE WITHOUT THE HIGH ROYALTY. THE DECLINE IN EMPLOYMENT IS THE RESULT OF OPERATIONS CUTTING BACK ON THE AMOUNT OF PRODUCTION FROM PUBLIC LANDS AND CLOSING OPERATIONS PREMATURELY BECAUSE THE DEPOSITS WOULD NO LONGER BE PROFITABLE TO MINE. THESE STATISTICS CAN BE DRY AND IMPERSONAL. I THINK OF EACH OF THESE JOBS AS REPRESENTING THE PRIMARY SOURCE OF INCOME FOR THOUSANDS OF NEVADA FAMILIES.

ANOTHER IMMEDIATE IMPACT OF THE PROPOSED ROYALTY IS THE DRASTIC REDUCTION IN THE EXPLORATION FOR NEW DEPOSITS. OUR SURVEY OF OPERATING NEVADA MINES INDICATES THAT EXPENDITURES ON EXPLORATION WOULD FALL BY 30 PERCENT FOR THE STATE AS A WHOLE AND BY 60 PERCENT ON PUBLIC LANDS. THIS ENSURES THAT MINING WILL BE GREATLY REDUCED AS EXISTING MINES ON PUBLIC LAND COME TO AN END.

COMMENTS RECEIVED FROM THE INDUSTRY IN OUR SURVEY SUGGEST THAT A ROYALTY ON THE GROSS VALUE OF PRODUCTION HAS SERIOUS IMMEDIATE NEGATIVE IMPACTS, BUT THE LONGER TERM EFFECTS ARE MOST SIGNIFICANT BECAUSE EXPANSIONS AT EXISTING MINES AND NEW DEPOSITS ARE NOT BROUGHT ON LINE AS MINES BECAUSE THEY ARE UNPROFITABLE AT THE HIGH ROYALTY LEVEL. IN A RECENT ANALYSIS OF THE LONG-TERM IMPACTS OF 12.5 PERCENT ROYALTY, TWO-THIRDS OF THE CURRENT PROVEN GOLD RESERVES IN NEVADA WILL BECOME UNECONOMIC TO MINE AND LOST TO THE NATION FOREVER.

WHILE WE BELIEVE THAT ARGUMENTS FOR SOME ROYALTY HAVE A REASONABLE SOUND TO THEM, THE CONGRESS SHOULD FOCUS ON PLACING ANY ROYALTY ON THE VALUE OF FEDERAL MINERALS AFTER COSTS ASSOCIATED WITH FINDING AND PRODUCING THOSE MINERALS ARE SUBTRACTED. SUCH ROYALTY WOULD BE ON THE VALUE OF THE MINERAL IN THE GROUND BEFORE ANY ADDITIONAL VALUE IS ADDED. CONGRESSMAN RAHALL WAS CORRECT IN HIS ORIGINAL UNDERSTANDING OF THE DAMAGING IMPACT OF A ROYALTY. A ROYALTY HAS TO BE FOUND THAT DOES NOT POSE A SUBSTANTIAL ECONOMIC BURDEN, THAT DOES NOT CLOSE MINES AND STOP NEW DEVELOPMENT.

NEVADA HAS TAKEN A NET PROCEEDS APPROACH TO MINERALS TAXATION. NO DOUBT A NET PROCEEDS APPROACH WOULD MAKE MORE SENSE THAN A GROSS PROCEEDS APPROACH FOR THE FEDERAL GOVERNMENT AS WELL. BUT YOU SHOULD NOT DRAW A FALSE ANALOGY WITH NEVADA. NEVADA DOES NOT OWN THE MINERALS THAT IT TAXES. NEVADA HAS DETERMINED TO EMPLOY INDUSTRY SPECIFIC TAXES FOR A SUBSTANTIAL PART OF ITS STATE BUDGET IN THE ABSENCE OF INCOME TAXES -- NOT ON TOP OF INCOME TAXES. OUR

NET PROCEEDS TAX ALLOWS THE MINES TO DEDUCT MOST OF THE DIRECT COSTS OF PRODUCTION, INCLUDING ROYALTIES TO OTHERS, AND THEN WE TAX THE NET AMOUNT.

IN ADDITION TO ROYALTY, I HAVE A FEW SPECIFIC COMMENTS ON TITLE II OF THE BILL. THIS IS THE SECTION OF THE BILL WHICH ADDRESSES ENVIRONMENTAL ISSUES AND THE PUBLIC'S OPPORTUNITY TO HAVE GREATER INFLUENCE IN THE OPERATION OF MINES ON PUBLIC LANDS. BOTH ENVIRONMENTAL PROTECTION AND A PUBLIC PROCESS IN THE PERMITTING OF MINES ARE CRITICAL TO THE RESPONSIBLE DEVELOPMENT OF THE NATION'S MINERAL RESOURCES. HOWEVER, THE APPROACH IN H.R. 322 IS, WE BELIEVE, OVERLY RESTRICTIVE AND UNDULY RAISES UNCERTAINTY IN THE BUSINESS OF MINING. UNCERTAINTY WILL CAUSE FUTURE EXPLORATION DOLLARS TO GRAVITATE TO AREAS WHERE THERE IS CERTAINTY THAT A DEPOSIT, IF FOUND, MAY BE MINED.

IN MY FOUR YEARS AS GOVERNOR, I HAVE OVERSEEN THE ADOPTION OF A STATE LAW REQUIRING RECLAMATION OF ALL LANDS DISTURBED BY MINING. NEVADA HAS ALSO DEVELOPED COMPREHENSIVE REGULATIONS GOVERNING WATER POLLUTION CONTROL AT MINING OPERATIONS. THESE REQUIREMENTS ARE WORKING WELL BECAUSE THEY WERE CRAFTED WITH A GREAT DEAL OF EFFORT AND COOPERATION BETWEEN THE MINING INDUSTRY, THE ENVIRONMENTAL COMMUNITY AND STATE REGULATORS. WE HAVE ALSO EXPERIENCED GOOD COOPERATION WITH THE FEDERAL LAND MANAGING AGENCIES.

WE BELIEVE THE RECLAMATION REQUIREMENTS IN TITLE II OF THE BILL ARE TOO RESTRICTIVE ON EXPLORATION AND SMALL MINING PROJECTS. A DETAILED PLAN OF OPERATIONS IS REQUIRED FOR THE SLIGHTEST DISTURBANCE AND 12 MONTHS OF PRE-DISTURBANCE MONITORING IS REQUIRED FOR A PLAN OF OPERATIONS. THIS WILL NOT WORK FOR EXPLORATION OR SMALL MINING BECAUSE OF THE LONG PERMITTING TIME AND THE COST INCURRED BEFORE IT IS KNOWN WHETHER A VIABLE MINERAL DEPOSIT MAY OR MAY NOT EXIST. WE SUGGEST THAT A THRESHOLD DISTURBANCE BE IDENTIFIED IN THE BILL. FOR EXPLORATION DISTURBANCE OF LESS THAN THE THRESHOLD ACREAGE OR SMALL-SCALE MINING DISTURBANCE WHERE CHEMICAL TOXICITY IS NOT A PROBLEM, THE PERMITTING REQUIREMENT SHOULD BE LESS RIGOROUS AND TIME CONSUMING. WE SUGGEST THAT THERE BE AN OPPORTUNITY FOR THE FEDERAL GOVERNMENT TO DELEGATE APPROVED RECLAMATION PROGRAMS TO THE STATES.

WE BELIEVE THAT BONDING FOR ACCIDENT CONTINGENCIES IS TOO OPEN-ENDED AND THAT COMMERCIAL SURETY WOULD NOT BE REASONABLY AVAILABLE FOR SUCH AN UNCERTAIN OCCURRENCE. WE REQUIRE RECLAMATION PERFORMANCE BONDING IN OUR STATE AND KNOW THAT, EVEN WITH VERY CLEAR BOND RELEASE CRITERIA, BONDING CAN BE A PROBLEM FOR ALL BUT THE STRONGEST COMPANIES. THE BONDING FOR CONTINGENCIES WOULD MAKE THE PROBLEM OF OBTAINING BONDS CONSIDERABLY WORSE.

BACKFILLING OF OPEN PIT HARDROCK MINES IS USUALLY NOT ECONOMICALLY POSSIBLE. MOST HARDROCK MINES ARE NOTHING LIKE A MINE FOR FLAT-LYING COAL, WHICH CAN BE BACKFILLED WHILE MINING AN

ADJACENT PIT. IN ORDER TO BACKFILL A PIT, A HARDROCK MINE MUST ESSENTIALLY BE MINED IN REVERSE. THIS NEARLY DOUBLES THE MINING COST. NEVADA LAW REQUIRES A MINE OPERATOR TO DEMONSTRATE WHY A PIT CANNOT BE BACKFILLED. IF BACKFILLING CANNOT BE ECONOMICALLY COMPLETED, IT IS NOT REQUIRED. IF MINING OF A SERIES OF PITS IS PLANNED IN AN AREA, BACKFILLING MUST BE GIVEN STRONG CONSIDERATION AND CAN BE REQUIRED BY THE REGULATOR IF BACKFILLING IS ECONOMICALLY FEASIBLE. IN ANY CASE, MINES MUST BE LEFT IN A SAFE AND STABLE CONDITION.

WE BELIEVE THE PROVISION FOR CITIZEN SUITS FOUND IN TITLE II OF THE BILL COULD LEAD TO LITIGATION BROUGHT BY INDIVIDUALS WHO WOULD NORMALLY NOT BE CONSIDERED TO HAVE LEGAL STANDING IN A MINING MATTER. THIS COULD LEAD TO COSTLY DELAYS OR SHUTDOWNS AND RAISE THE RISK OF FINANCING MINING OPERATIONS BECAUSE OF THE UNCERTAINTY CREATED BY THE POTENTIAL FOR WHAT MAY TURN OUT TO BE FRIVOLOUS LAWSUITS. THE TIME FOR CITIZEN INPUT IS IN THE PUBLIC SCOPING CONDUCTED UNDER THE NATIONAL ENVIRONMENTAL POLICY ACT (NEPA). THIS LEADS TO THE DEVELOPMENT OF CONDITIONS UNDER WHICH MINING IS ALLOWED AND IT SHOULD BE UP TO THE REGULATOR TO ENFORCE THOSE CONDITIONS.

FINALLY, THE UNSUITABILITY REVIEW PROCESS DELINEATED IN TITLE II SEEMS TO FURTHER RAISE THE UNCERTAINTY OF WHETHER A MINE CAN BE DEVELOPED OR NOT. IF A COMPANY SPENDS MILLIONS OF DOLLARS SEARCHING FOR A HARDROCK MINERAL DEPOSIT, IT NEEDS AN ASSURANCE THAT IT CAN DEVELOP A MINE IF IT COMPLIES WITH ALL THE PERTINENT REQUIREMENTS. THE PROPOSED UNSUITABILITY REVIEW PROCESS WOULD REQUIRE THE DESIGNEE OF THE SECRETARY TO DETERMINE WHETHER MINING SHOULD BE ALLOWED OR NOT, EVEN AFTER A DEPOSIT IS FOUND. A DECISION AGAINST MINE DEVELOPMENT WOULD MEAN THE MILLIONS OF DOLLARS IN EXPLORATION EXPENDITURES WERE WASTED. THE EXISTING LAND USE PLANNING PROCESS OF BLM AND THE FOREST SERVICE CURRENTLY PROVIDES THE LAND MANAGERS WITH TOOLS TO SET ASIDE AREAS FROM MULTIPLE USE. THERE IS OPPORTUNITY FOR PUBLIC COMMENT AND ADEQUATE LEAD TIMES SO EXPLORATIONISTS CAN TAKE THAT INTO ACCOUNT BEFORE THEY COMMIT EXPLORATION DOLLARS TO AREAS THAT HAVE A LIKELIHOOD OF BEING RESTRICTED FROM DEVELOPMENT.

CONCLUSION

H.R. 322 NEEDS TO BE MODIFIED TO BETTER RECOGNIZE THAT PROPERLY REGULATED HARDROCK MINERAL DEVELOPMENT ON THE PUBLIC LANDS IS GOOD FOR THE STATES IN WHICH IT OCCURS AND GOOD FOR THE NATION AS A WHOLE.

WE KNOW THERE ARE ASPECTS OF THE 1872 MINING LAW WHICH CAN AND SHOULD BE AMENDED. FOR EXAMPLE, I BELIEVE A ROYALTY ON SOME VALUE OF PRODUCTION CAN NOW BE ARRIVED AT IN NEGOTIATIONS WITH THE INDUSTRY. HOWEVER, THE ROYALTY SHOULD BE ON SOME VALUE NET OF COSTS RATHER THAN THE GROSS VALUE BECAUSE OF THE HIGH COST OF

DEVELOPING MINES AND THE FACT THAT COSTS CANNOT BE PASSED ON THROUGH PRICE INCREASES TO CUSTOMERS.

AS IMPORTANT AS THE ROYALTY ISSUE, HOWEVER, IS THE NEED TO ARRIVE AT REASONABLE APPROACHES TO LAND USE PLANNING AND CITIZEN INVOLVEMENT WHICH REDUCE THE UNCERTAINTY OF A DECISION TO EXPLORE FOR AND MINE MINERAL DEPOSITS ON THE PUBLIC LANDS.

AS GOVERNOR OF THE STATE OF NEVADA, I URGE THE COMMITTEE, ITS STAFF AND THE INDUSTRY TO CONTINUE TO ATTEMPT TO RESOLVE THE ISSUES I HAVE POINTED OUT TODAY. YOU ARE ALL MOST WELCOME TO COME TO OUR STATE TO SEE HOW MODERN MINING CAN WORK FOR THE BENEFIT OF THE ECONOMY WHILE TAKING INTO ACCOUNT THE NEED TO PROTECT THE NATURAL ENVIRONMENT.

THANK YOU

Mr. LEHMAN. Thank you very much.
Mr. Yearley.

STATEMENT OF DOUGLAS C. YEARLEY

Mr. YEARLEY. Thank you, Mr. Chairman and members of the committee. My name is Douglas C. Yearley. I am the President and CEO of Phelps Dodge Corporation, the second largest copper producer in the world, behind the Chilean-owned government corporation of Codelco.

I might ad lib by saying this is my first congressional hearing, and I found it educational. It also has been 4½ hours and we are hearing from the first industry representative. I hope you saved the best for last.

My company employs about 8,700 people in the United States, 14,500 worldwide. We operate in 24 countries, so we are a global mining company and can put some perspective on the U.S. as it relates to other parts of the world.

We did go through some very difficult times in the middle of the last decade. We did what we had to in terms of restructuring. We are now internationally competitive and we hope to remain that way, and hope to work with you on this bill so that it does not impact the competitiveness of ourselves in the United States.

I am also here speaking as a vice chairman of the American Mining Congress. I think that group is well known to you. With me is Dave Delcour, who is a technical expert, to assist me, if I have questions I can't handle.

I don't think I need to describe the Mining Congress other than to say to you, as you know, it is the trade association representing the mining industry here in the United States, and I think you have had many experiences with them.

I would like to begin by making the point that this bill, as we see it, has the potential for staggering economic consequences.

I would also comment that we have heard several times today that there is a lack of good economic data. Reference has never been made to a study that was done last year by an independent accounting firm, Coopers & Lybrand, and the law firm of Davis, Gramm & Stubbs, who did a study on last year's mining bill that was very similar to this year's. Except for the royalty provision, that study had 10,000 pages of data. It touched on 75 different mining operations and 35 mining companies. And it did use a modeling system from the Department of Commerce to evaluate the economic impact of the bill.

I will give you the conclusions of the study, but I would strongly recommend it be included in your deliberations as you look at the economic impact here. The study concluded that over time there would be loss of 30,000 jobs, up to 30,000 jobs as a result of it, and that net it would actually cost the Federal Treasury money as a result of unemployment payments, reduced taxes, and new overhead costs.

Finally, it also concluded that in the western states, namely the 14 mining western states, there would be a dramatic impact on the revenues and on the economies of those particular States.

I know in my own State of Arizona, where mining has a very important role, the impacts would be on the order of 7–8 percent of

the GNP of that State. Similarly, there are problems in the State of Nevada and elsewhere.

I think it is instructive to look at the Arizona experience as it relates to the 1989 Arizona Hard Rock Mineral Development Act. Many of the speakers today have talked about the risks involved in mining, and we are in a risky business. And if we are to continue to grow as mining companies or even maintain our position, we have to be able to discover new bodies with exploration.

Exploration is like R&D for manufacturing. It is our future. There are provisions in the new law that are based on the fact that we would be able to gain access to public lands in the future.

The current Arizona system, which I mentioned went in in 1989, does not provide that access or security of tenure that I mentioned. It was put in after nearly a decade of debate in our State as a result of court ruling on the constitutionality of the old rules concerning exploration and access, and since it has been put in—and there is a 2 percent gross royalty with that—the results have been rather dramatic.

Exploration, as I say, is the future of our business. It is a leading indicator of where we are going. And the number of exploration permits have steadily declined. We had in 1989, 120,000 acres that were under permit for exploration. That has declined to a current level of 49,000 acres and is on the way to zero at the present trend.

The reason? People do not believe they can go onto this land and have a surety that if they can discover something they will be able to develop it. Similarly, the lease income to the State has declined from almost $1 million to $80,000, and is falling away to zero.

So this is an example, at least in my opinion, of a similar system to what we have with H.R. 322 that has led to a total decline in exploration, and with it the prospects of mining development on State lands in Arizona.

The central issue in the elections—it was talked about earlier—was jobs. I notice that we didn't hear very much about jobs from either the Secretary of the Interior, Bruce Babbitt, from our State, or from our environmental friends, but clearly that is what our country needs. And I don't mean jobs reclaiming mines, where no value is being added, simply moving one sand pile from here to there, but rather jobs that will create value, which is what we are all in business for.

The *New York Times* has reported that the highest wages of any industrial sector is in the mining sector, although we have had a fairly significant loss in numbers of jobs. And I am afraid that this particular law would tend to drive jobs offshore. That is not a threat, because as a businessman we make decisions on where we can best explore for and develop their own prospects. We would prefer to be in this country but we have to do it in a way that is economically sound.

I think the value of minerals sometimes gets lost in the rarefied atmosphere of Washington, with due respect. And let me just comment on that. Everything in this room that is lead has come from copper. The wires that feed these light bulbs are copper. Every home that is built in the United States uses 430 pounds of copper. A commercial airliner uses 10,000 pounds of copper. And every

child who is born in this country will in her or his lifetime use 1,500 pounds of copper. It is a critical material for our economy.

I am concerned we will be forcing the mining of that offshore, if there are not some moderations to this law.

I think on balance, certainly from the industry perspective, perhaps not from the perspective of this room, we think this General Mining Law in places worked well. But we do know there have been abuses. And we are here to tell you that we are prepared to work toward finding reasonable compromises as we go forward.

Last year the industry did sponsor a number of what we thought were constructive changes to the law. That failed to pass in conference, as you well know. We have submitted to the record the AMC position on these amendments. But we would welcome the opportunity to discuss them.

I must stress a number of important factors for us, from the industry side, as it relates to any changes that are put forth. It is critical that we have the right of self-initiation, we have the right of access to public lands, we have the right to secure tenure.

I think the litmus test for me is, will a bank lend money against a prospect that has been developed, and the only way a bank will lend money is if there is a surety of title. Without that, you have an unknown commercial enterprise. And there is the vehicle in the laws now that suggests to me that it is entirely possible a considerable amount of money could be spent and you would not have that security of tenure.

My company spends $45 million a year on exploration. Today, about two-thirds of that is in the United States, and I would hope that it would stay there, but only if we feel that when we find something we will have a right to it and not a long and protracted negotiation with government as to whether it is appropriate to develop it.

Those are large pieces of money that are being spent. I think we also have to strongly oppose the current royalty and reclamation regulations as they are in H.R. 322. The royalty provision at 8 or 12–½ percent to me is something I can't even fathom.

As a businessman, to take 8 or 12 percent off the top of a project on a gross basis virtually eliminates anything that I have in my sights today, no matter where it is in the world. And therefore it is so onerous as to take off the board most anything I know of in the United States.

The reclamation standard, I know there is a waiver on the open pit, but there are a lot of qualifications on it. Armorense mine is the third largest copper mine in the world, a man-made Grand Canyon. To me it is a beautiful site where it is and as it is. It would cost us $2 billion to refill that pit. There are 3 billion tons of material that have been removed from it. And it is just out of the realm of possibility that we would make work to move that dirt back into the mine pit and accomplish nothing except create some short-term jobs.

I don't think an entirely new system of laws are necessary. I don't think it is necessary to repeal totally what we have here. But we are certainly willing, as I have said before, to work with you on the abuses and find a way that we can satisfy all those who have criticisms as well as keep the mining business viable.

The United States cannot afford to make a mistake here. Mining is an $86 billion a year industry directly employing 500,000 Americans. We cannot afford to lose that many good-paying American jobs or even a portion of them. And I am concerned that this law in its present form will cause a significant loss in that employment.

Mr. Chairman, let me reiterate our interest in working with you and the Members of the subcommittee to find an appropriate and productive solution to the challenges we face. I thank you for providing us a chance to testify here today.

[Prepared statement of Mr. Yearley and attachment follow:]

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STATEMENT OF

DOUGLAS C. YEARLEY
CHAIRMAN, PRESIDENT AND CHIEF EXECUTIVE OFFICER

PHELPS DODGE CORPORATION

on

HR 322, The Mineral Exploration and Development Act of 1993

before the

Subcommittee on Energy and Mineral Resources
of the
Committee on Natural Resources

United States House of Representatives

March 11, 1993

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Good morning Mr. Chairman and Members of the Energy and Mineral Resources Subcommittee. I am Douglas C. Yearley, Chairman, President and CEO of Phelps Dodge Corporation, the world's second largest producer of copper.

Phelps Dodge employs more than 8,700 people in the United States. Phelps Dodge is an example of a company that has been fighting to remain internationally competitive, without the help of the Federal government. In the mid-1980s, Phelps Dodge suffered such serious losses that it was questionable whether we would survive. The company underwent a massive restructuring and invested in new technologies to reduce production costs. Today we are healthy, but our future in the United States remains uncertain because of the threat of legislation, such as HR 322.

Given my concern, I am pleased to be here today to testify as a Vice Chairman of the American Mining Congress. Accompanying me is David W. Delcour, President of AMAX Resource Conservation Company and Chairman of the AMC Public Lands Committee.

The American Mining Congress (AMC) is the principal trade association of the U.S. mining industry. Its member companies mine and process most of the domestically produced metals, industrial minerals and energy minerals--other than oil and gas--utilized in the American economy. A large portion of the minerals produced in this country are from public lands. The American Mining Congress, therefore, is vitally concerned about legislation governing the acquisition of mining rights on such lands. I have an oral statement and will submit several supporting documents for the Record, including a section by section analysis of HR 322 and a statement of the AMC position on Mining Law reform.

Mr. Chairman, the economic consequences of HR 322 would be staggering. Last year AMC released the results of an independent study conducted by the accounting firm of Coopers & Lybrand and the law firm of Davis, Graham & Stubbs. That study analyzed HR 918, last year's Mining Law bill. The study used real company data and showed that HR 918, if enacted, would have radically changed mining as we know it in the United States. Because this year's bill imposes additional costs beyond last year's bill, with a proposed 8 percent royalty, the results of the Coopers & Lybrand study only underestimate the impact of the bill we are discussing today. Based on more than 10,000 pages of data concerning 75 mining projects of 35 U.S. mining companies, the study employed a modeling system developed by the U.S. Department of Commerce to evaluate economic impact on a regional basis, using actual experiences in the mining industry and current economic conditions.

The bottom line is clear:

- With the rental fees and the addition of royalty provisions in HR 322, some mines that are operating today would never have been built and other expenditures would not have occurred. This would have meant 10,000 to 30,000 fewer jobs in mining related activities.

- There would be no relief for the Federal budget because HR 322 would actually cost the Federal Treasury through increased government spending for administrative overhead and unemployment payments, and reduced taxes.

- Repeal of the Mining Law would hurt at every level--Federal, state and local. HR 322 would result in the elimination of jobs and economic activity, and reduced incomes by business and working people. That translates into reduced income taxes. For example, I would like to share with you the results of a study prepared by the Western Economic Analysis Center on the copper industry's impact on the economy in 1991 in the State of Arizona, where Phelps Dodge is based. That study showed that in 1991, when more than 58,000 Arizonans were employed as a result of the copper industry, Arizona's economy gained $5.6 billion through combined direct and indirect contributions of the copper industry to personal business and government income. Almost $295 million in revenues to state and local governments were generated directly or indirectly by the industry, representing 5.2 percent of the total Arizona economy. Almost 7,700 state government employees receive salaries because of taxes paid directly or indirectly by the industry--1,500 of those state employees are school teachers. Given the remote location of most mines, the importance of this contribution to the local economy cannot be overstated.

- Economic activity would be adversely impacted in the 12 Western states where most of the mining on public lands occur.

- State treasuries, which depend on the mining industry for income taxes, property taxes and mine production taxes, would be faced with trying to find some way to replace what has been a dependable source of revenue supporting schools, hospitals, and highways. I believe it would be instructive to look at what has happened in the State of Arizona since passage of the 1989 Arizona Hardrock Mineral Development Act.

Mineral exploration and production is an inherently uncertain and risky business. The current Arizona system does not provide reliable access and secure tenure because it creates uncertainty through discretionary, and therefore unpredictable, lease terms including a royalty based on the gross value of metals produced. The Arizona experience provides a clear illustration of the effect this type of system can have on exploration. New mineral exploration on state lands has virtually disappeared as demonstrated by the progressive decrease of both the land held under prospecting permits and the corresponding rental income to the State of Arizona.

Since passage of the 1989 Arizona Hardrock Development Act, the number of acres held under exploration permits has steadily declined from 121,000 acres in 1989 to 49,000 acres last year. This compares to a high of 550,000 acres in 1981. Annual rental income from exploration has declined from $959,000 in 1981 to $80,000 in 1992. Since 1989, there have been only seven mineral leases applied for based on mining claims or mineral exploration permits, and no mineral leases have been issued. Only seven mining claims have been located since 1989, and there have been no public auctions of mineral leases under the new public auction system. A similar Federal system such as that proposed by HR 322 is likely to have similar results.

Under HR 322 the costs of production for metals mining would greatly increase, making U.S. minerals less competitive when compared with deposits in Mexico, South America and the Commonwealth of Independent States. At a time when our economy is becoming more global, this legislation would severely diminish the competitiveness of U.S. mining products in the world marketplace.

The central issue of last year's election was jobs and the economy. The American people made it clear that they wanted a healthier economy <u>with</u> the creation of good jobs. On January 31, 1993, the New York Times ran an article that showed that the mining industry in this country pays the highest weekly wages of any other industrial sector. It also revealed that the mining industry has experienced the sharpest loss of jobs since 1979.

HR 322 would continue the elimination of these good jobs, not accomplish what the American people are clamoring for, the creation of good, well-paying jobs.

Other witnesses will focus on specific elements of HR 322, but I want to make the general observation that the cumulative effect of the different provisions in this bill would be devastating to the mining industry, and therefore to the entire U.S. economy.

The majority of minerals and metals are priced on a globally competitive basis. Increasing costs in the United States or eliminating access to Federal lands will lead to less U.S. production, more imports, fewer jobs and an increased trade deficit. Metals produced in the United States under this system would simply be unable to compete in the international market.

And this is not just a Western issue. The majority of manufacturing facilities, which process minerals mined in the West, are located east of the Mississippi. This bill affects the entire economy of the United States. Long-term strategic defense planning would dictate that we be as self-sustaining as possible in mineral and metal production. However, we are becoming more dependent on foreign sources of supply. We import 22 percent of iron ore requirements, 73 percent of tin, 70 percent of zinc, 75 percent of nickel and virtually all of our aluminum ore, manganese, chromium, graphite and cobalt.

The value of minerals to our economy cannot be overstated. Remember, virtually everything you see around you was either grown or mined. Three examples will put this in perspective: each new home in the United States uses 430 pounds of copper, and the average commercial airliner uses 10,000 pounds of copper. Every person born this year in the United States will, in his or her lifetime, use 1,500 pounds of copper. The point is this--any revenue raising measure or changes to our costs or our ability to mine on public lands must be carefully weighed against the potential negative impacts to the economy of this country.

On balance, the General Mining Law we have today works well. However, we know there have been abuses. But reputable mining companies are not the abusers. Most importantly, we do not insist that the law be left totally unchanged. Last year the industry supported a number of changes that were designed to address the real offenders, and to address legitimate concerns being raised about the law--including 1) payment of fair market value for the surface estate, 2) elimination of illegal occupancy of mining claims, 3) payment of an annual holding fee, and 4) compliance with a Federal reclamation standard, if no state standard exists. These changes were included as an amendment to the Senate fiscal year 1993 Interior Appropriations bill, but were deleted during the House-Senate Conference.

I have submitted for the Record a copy of AMC's position on proposed amendments. We want you to know that the industry would welcome an opportunity to work with you on these and other issues.

I must stress, however, that there are a number of provisions of the General Mining Law that are absolutely critical to the future of mining and mineral development. These provisions must be preserved in any consideration of changing the Mining Law.

These areas include access to the public lands, the right of self-initiation and the right to earn secure tenure by discovery of a commercial orebody, all of which are presently embodied in the existing law. Any modifications affecting these basic principles will threaten the industry's ability to explore for minerals and develop new mining properties.

We also strongly oppose the royalty and reclamation requirements of HR 322. The excessive royalty provision would cause the immediate closure of some mines and would discourage any future development. The reclamation standards are totally impractical. We have estimated that it would cost Phelps Dodge $2 billion (1992 dollars) to backfill our Morenci mine in Arizona. Some argue this would create jobs, but I submit to you that this would not create <u>good</u> jobs, and such an expenditure would not produce anything of any value to our society. Most states already have strong reclamation standards and are in a better position to understand and address site specific environmental issues. At Phelps Dodge we support reasonable reclamation standards and have been actively involved in the development of a Mining Act, which includes reclamation provisions, that should pass the New Mexico legislature this year.

Finally, an entirely new system of laws and regulations is not necessary. To repeal the established, successful body of law embodied in the General Mining Law and replace it with a new system that requires extensive regulatory implementation, would halt new mining activity for a number of years, even if judicial challenge could be avoided.

HR 322 completely changes the system under which mining is initiated and conducted on public lands, and substantially increases the costs.

When we look at the record over the past 121 years, we see the Mining Law system has fostered the responsible development of an industry and, indeed, serves the public interest well. As I stated earlier, we recognize there have been abuses particularly by non-mining interests, and we would like to address those abuses as much as each of you.

Proponents of Mining Law repeal have misled the public into believing the government is giving away vast acres of Federal land. The fact is, since 1872, only 3 million acres of public land--or less than one-half of one percent of all Federal land--have gone into private ownership under the Mining Law. This is in sharp contrast to other Federal land programs, including the 288 million acres converted to farming by homesteaders and the 94 million acres transferred to the railroads through land grants.

The United States cannot afford to make a mistake here. Mining is an $86 billion a year industry directly employing 500,000 Americans. We cannot afford to lose more good paying American jobs. If the Mining Law is replaced by HR 322, any new mining exploration would be driven offshore, and existing projects would be forced to mine only high-grade material or shut down because they simply would not be able to compete.

Mr. Chairman, let me reiterate our interest in working with you and the other Members of the Subcommittee to find an appropriate and productive solution to the challenge we face. Thank you for providing us with the opportunity to testify.

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APPENDIX I

American Mining Congress Position on the General Mining Law

- **Patenting**

In addition to requirements already found in the General Mining Law, the mining industry does not object to paying fair market value for the surface estate of a mining claim at the time the patent is issued, provided there are prompt and fair procedures for determining such value, and the process of mine development is not unreasonably delayed. Such surface estate value should be the highest of the nonmining commercial, residential or agricultural use of the claim surface at the time the patent issues.

While most people familiar with the mining industry understand that it costs hundreds of thousands and sometimes millions of dollars to develop a claim to the point of seeking patent, industry is prepared to pay the fair market value of the land to correct this perceived abuse.

- **Unauthorized Use**

The use of unpatented mining claims for residential, recreational or other purposes not related to mineral development activities is prohibited and regulations should be promulgated by land management agencies detailing more effective methods of enforcement.

Patents should include restrictions prohibiting nonmining uses such as commercial development and real estate speculation. While legitimate miners have not used the Mining Law for such nonmining purposes, restrictions on patents issued would make it impossible for patented land to be used for purposes other than mining.

- **Reclamation**

The Secretaries of the Interior and Agriculture should exercise existing authorities to amend surface management regulations to more specifically and clearly set forth their authorization to require environmental regulation of activities on unpatented mining claims. If problems exist that cannot be addressed administratively, Congress should consider appropriate amendments to the Federal Land Policy and Management Act.

With only two exceptions, states have stringent reclamation standards for mining operations. To insure that all states require reclamation, existing federal reclamation standards should be imposed where a state has failed to require reclamation.

Prior to any mineral activity causing more than minimal disturbance to the environment, the claimant should furnish a reasonable surety bond or other financial guarantee in an amount sufficient to complete reclamation.

- **Five-acre exemption**

The Secretary of the Interior has adequate authority to modify or delete the provision in the Bureau of Land Management surface management regulations exempting mining operations occupying five acres or less from the requirement of filing a plan of operations. The Secretary should undertake a review to determine whether and how such authority should be exercised. One option would be to adopt the Forest Service approach, which bases the need to prepare a plan of operations on the degree of surface disturbance rather than the acreage disturbed, in an effort to assure the most appropriate level of land manager oversight.

- **Annual holding fee**

AMC has no objection to claimants being given the option in some years of paying an annual holding fee or performing annual assessment work. This will assure that works on the ground are pursuant to an orderly exploration program and not merely to meet an arbitrary requirement to hold an interest in mineralized land. Requiring work on the ground in some years will ensure that claims are not held for speculative purposes.

- **Royalty**

Some opponents of the Mining Law suggest that a royalty should be imposed on mineral production, even though Congress has already imposed a claim rental fee for two years that is estimated to raise $40-55 million annually. However, an economic analysis of proposed royalties shows a large net revenue loss to the federal treasury. This does not reflect the impact on state and local treasuries.

Hardrock mining returns millions of dollars annually to federal and state governments in the form of severance and other taxes specific to mining, corporate taxes, property taxes, sales taxes and income taxes.

A royalty would dramatically increase the cost of mining and reduce the nation's mineral base.

A royalty also raises the cut-off grade of ore being mined resulting in lower grade ores remaining in the ground. Thus, some ore containing valuable minerals will be left in the ground - a poor way to conserve natural resources.

APPENDIX II

American Mining Congress Analysis of Specific Provisions of H.R. 322

No Grant of Mineral Rights

The apparent purpose of H.R. 322 is to set forth the rules by which minerals found on public lands will be conveyed to those locating the minerals. Nowhere in the bill, however, has language been found that constitutes a grant of mineral rights. Inasmuch as the minerals in the ground are part of the real estate, which no longer will be available to private appropriation following enactment, the lack of a grant of minerals leaves the would-be developer of the mineral estate with no interest in the subject of his development. This deficiency could be corrected by the addition of suitable language in Section 102(b).

Diligence

Current mining law requires prospectors to work their claims continually until they encounter a discovery of valuable minerals. This has proven to be an exceptionally fine way of assuring that only good faith operators are entitled to initiate a property right against the United States. H.R. 322, by contrast, eliminates the role of discovery in initiating a claim to minerals found on public lands and replaces that concept with a requirement that large sums of money be expended on a claim annually with no assurance of progress toward a discovery.

Fees

H.R. 322 provides for escalating rental fees, which may be largely offset by diligent development expenditures. Generally speaking, such a system will be workable and will not impose undue hardship in the early years of exploration. Since exploration should be encouraged and not speculation, it is entirely appropriate that, though not as effective as the current discovery provision, development work be allowed as an off-set to all but $2.50 per acre of the rental charge. Expanding the types of work counted as diligence beyond that allowed for assessment work under the current law and recognition of diligence for the benefit of contiguous claims are positive changes from earlier versions of this legislation.

The main concerns with the fee provisions are the apparent open-ended authority given the Secretary to increase fees and the imposition of user fees found in Section 402. While the purchasing power adjustment found in Section 409 may be justifiable, Section 104(a) appears to give the Secretary unrestrained discre-

tion by requiring establishment of rates "of not less" than the amounts that follow. Moreover, the user fee provision is limited only by the Secretary's spending to administer the Act. No constraints are imposed on the Secretary's spending practices, nor does the miner have any recourse to challenge the Secretary's calculations or assertions as to the appropriateness of administrative costs. Inasmuch as H.R. 322 would impose enormous new administrative responsibilities on the Secretary, there is concern that this charge would place exploration and development on public lands at a severe competitive disadvantage with activity on state and private lands.

Other Claim Maintenance Provisions

Subsection 104 (d)(2) contains the phrase "in any diligence year." The phrase should be "for any diligence year" since the instrument is not filed in the year in which the work is performed.

Royalty

The American Mining Congress remains opposed to the imposition of a royalty on hardrock mining activities on public lands. The public interest is better served by maintaining the increased level of production and exploration activity that would be lost with the imposition of a royalty.

One of the key determinants in establishing a royalty in arms-length negotiations among private parties is the degree of knowledge available at the time the royalty is negotiated and the amount of investment already undertaken by the party reserving the royalty interest. In a situation such as found with grass roots exploration on public land, virtually no information has been developed by the federal government and no investment in the mineral estate has been made by the federal government. That situation suggests that any royalty should be nominal in nature.

It should also be noted that a large federal royalty will serve to discourage or preclude retention of royalties by prospectors and junior companies. There is simply not enough pie left to cut up. Thus, the mine finders, i.e., prospectors and small mining companies, will be discouraged from going out and finding the new ore deposits that will replace those being depleted.

To the extent Congress nevertheless chooses to impose a royalty on public lands mineral production, it is imperative that there be equitable treatment among commodities and among producers. The fairest royalty basis would be net the value of ore at a mine mouth. There are several reasons why this is the

case. First, a royalty is a reserved interest in the mineral estate and historically it is a share of the mineral, mined and brought to the ground, that belongs to the royalty holder. Second, once ore leaves the mine mouth, value is added in different ways for different commodities. Third, some producers sell their products at different stages of refinement, ranging from ore to engineered finished products, and every point in between. In other words, the royalty owner should have a share of the copper ore, not the copper wire. Unless Congress is prepared to allow federal land managers the discretion to negotiate royalties on a case-by-case basis, equity among commodities and among producers demands the type of royalty just outlined.

The royalty rate is preceded by the words "not less than." Presumably this language allows the Secretary unfettered discretion to raise the rate, but not to lower it. If the goal is to enable the Secretary to adjust the rate to maximize federal revenue, he must be given the authority to lower the rate, since studies have shown the rate in the bill will lead to lower production and become a drain on government revenue. If, on the other hand, Congress does not want the royalty rate controlled by the market, it ought to set a firm, certain rate that will enable mining companies to decide whether to seek and develop deposits on public lands in the United States or elsewhere.

Limitation on Patents and Other Transition Issues

The limitation on patenting found in Section 107 and the transition provisions found in Section 405 require considerable additional attention. As written, these Sections raise serious questions dealing with fundamental fairness and, in all probability, authorize unconstitutional takings.

Once a discovery has been made under the existing Mining Law, rights valid against the United States vest in the discoverer. While these rights can be subject to abandonment for failure to comply with various legal strictures, they may not be taken without due process. It is practically inconceivable that the courts would find due process in a provision that retroactively repeals an existing statutory right to a patent.

At the very least, the effective date of repeal of the patent right must be the date of enactment of new legislation. Moreover, the date selected must set a deadline for the further vesting of rights and not merely arbitrarily cut off fully vested rights awaiting recognition by the Secretary. As written, H.R. 322 not only requires application for patent to have been made months before any possible enactment of the bill, it also requires a number of other procedural steps controlled by the Secretary to have been completed.

These problems are easily avoided by providing a reasonable transition period for those who are entitled to patents under existing law. It is suggested that existing claim holders be given up to three years from the date of enactment to submit a completed application for a patent. The transition provisions in Section 405 should be amended to provide that claims must be converted or be the subject of a patent application within three years. Where patent application is made, but denied, claims should be converted as a matter of law.

Environmental Considerations

- **Reclamation**

Title II of H.R. 322 reflects no practical understanding of mining, the mining industry, or the affected environment.

The reclamation and operational performance standards set forth in Title II are not supported by any studies on the standards' technical or economic feasibility. The requirement that affected land be "...backfilled, graded and contoured to its natural topography" at the conclusion of mining is an obvious effort to impose the Surface Mining Control and Reclamation Act's approximate original contour standard.

The American Mining Congress is supportive of sound reclamation of mined land and is amenable to the notion that any problems encountered with the existing regulatory regime should be addressed. The Federal Land Policy and Management Act is the more appropriate statutory framework for considering this issue.

H.R. 322 should incorporate a recognition of feasibility based upon such factors as terrain, climate and mining methods. Section 709 of the Surface Mining Control and Reclamation Act mandated a study of the applicability of coal reclamation requirements to hardrock mining. That study, undertaken at the direction of the National Academy of Sciences, concluded that hardrock reclamation needed to be addressed on a mine-by-mine basis and that hardrock mining did not lend itself to rigid uniform national standards. Current practice of the federal land managing agencies recognizes these inherent differences and requires reclamation to be performed in accordance with the approved specifications defined in each plan of operations. While it may be appropriate for Congress to mandate certain guidelines to be considered by land managers in approving plans of operations, it is imperative that these officials be left with adequate discretion to consider the unique circumstances of each mining operation.

There is particular concern that Section 201(b) fails to recognize the difference between advanced exploration and mining. While a special provision is made for preliminary reconnaissance work, detailed exploration involving access roads, bulk sampling and trenching cannot proceed without triggering costly, time-consuming permitting processes, including baseline studies and extensive public participation. Advanced exploration may justify more detailed oversight by the federal land manager, but it cannot bear the costs associated with permitting actual mining operations.

Section 201(e)(7) and the last phrase in Section 201(g)(1)-(c) should be deleted. An operator has no control over the provisions in the applicable land use plan, which often will have been prepared with no knowledge of the mineral potential of the parcel in question. Final reclamation frequently will be inconsistent with an applicable land use plan and it is unreasonable to delay permitting while the cumbersome process of amending a land use plan proceeds.

Section 201(n)(4)(B) is too absolute. Controls on discharges to surface and groundwater should be tied to limits established in discharge permits.

Section 201(n)(5), pertaining to grading, poses major problems for mine operators. This Section should be amended to reflect project economics. In most cases it will be uneconomic to backfill an open pit, yet the bill presumes that will be the norm. No reference at all is made to the creation of glory holes, which often are the result of underground mining practices. By definition, glory holes cannot be recontoured to anything approaching original topography. We believe the entire grading section needs to be rethought in light of both the economic and physical realities of hardrock mining methods.

Section 201(n)(6) would effectively cause the retention of 50 percent of reclamation bonds for 10 years for most public lands mines. A demonstration of successful revegetation for five years should be sufficient to end the high cost of bonding.

Section 201(n)(10) gives plenary authority to the Fish and Wildlife Service to impose any conditions it chooses on mineral activities. Its role should be advisory only.

- **Permitting Application Process**

H.R. 322 would establish a new application process to permit exploration or mining. The requirements for a "complete application" are such that an application will take at least two years to develop. For every mine plan received by the administrator, a notice must be published and a hearing held, if requested by a

concerned citizen. If a citizen contends that an application is incomplete, the process is extended until resolved. The mine permitting process is then extended further and the NEPA review does not start until the application is complete.

♦ **Applicant Violator System**

The applicant violator system established in Section 201(g)-(3) of the bill is far too rigid. The references to "any claim holder" should be deleted. The enforcement record of a non-operating claim holder should not be a bar to permit approval. In addition, by providing that any current violation precludes permit approval, the bill fails to distinguish trivial violations from significant violations. Moreover, it is unclear as to whether or not alleged violations or violations actively being corrected pursuant to a compliance schedule or consent order would mandate permit denial.

♦ **Citizen Suits**

H.R. 322 would take various concepts of citizen enforcement well beyond limits established by Congress in other environmental laws. The effect is to shift the principal role of enforcement to "interested citizens." For example, the citizen suit provisions permit a broader range of actions against the administrators of the law than any other environmental law. They also contemplate citizen suits against any claim holder, applicant or operator alleged to be in violation of any provision of the Act. The broad bases for suits against the Secretary in Section 202(e)(1)(A), (C), and (D) should be adequate to protect any legitimate citizen interest. Subsection (B) would only afford an additional opportunity to harass mine operators and drive up nonproductive legal expenses. We would ask that Subsection (B) be deleted.

♦ **Unsuitability Process**

H.R. 322 would establish a program that requires a review of "all lands subject to this Act" for their unsuitability for mining. This would be akin to the massive wilderness review programs that have stymied the Bureau of Land Management and Forest Service during the past 24 years. It would apply to approximately 400 million acres. The unsuitability determination is very broad. It requires that lands be declared unsuitable for mining if it appears that mining could not occur in a manner that would satisfy a long list of reclamation or other aesthetic considerations. The criteria for unsuitability are precisely the same as for permit issuance. Accordingly, the unsuitability process represents an abstract determination of factors best considered in the context of a permit application.

The bill also permits citizens to petition to have lands declared unsuitable. This would automatically halt consideration of any mining plan so long as the petition process continues. There is no limit on the number of petitions that may be filed or the time by which they must be acted upon. There should be constraints on the ability to use this process frivolously. Also, there should be a reciprocal petitioning procedure to allow removal of lands from an unsuitable designation. Changing technology and new information might well lead to a finding that lands previously thought unsuitable for mining are now suitable.

- **Right to Mine**

H.R. 322 gives the Bureau of Land Management and Forest Service the right to deny a plan of operations even if it complies with the vastly expanded regulatory process, all environmental laws and standards, and survives the "unsuitability" review. Essentially it eliminates the "right to mine." Obviously, there are taking concerns, but beyond that, this effectively makes each proposed mining project a political decision and eliminates the measure of certainty required to attract or commit capital to a project. The vast sums required to define the existence of an economic deposit cannot be justified if there is not at least a presumption that the discovery can be mined.

- **Lands Not Open to Location**

With all of the opportunities to deny mining found throughout H.R. 322, Section 205 at first seems to be merely redundant. By including areas of critical environmental concern and critical habitat within its purview, however, Section 205 has the effect of arbitrarily closing vast tracts of public land from mineral development. These types of management classifications should not automatically preclude mining. Often mining can be compatible with the environmental concern or critical habitat needing protection.

Savings Clause

Section 411(b)(9) provides that nothing in H.R. 322 shall be construed as superseding, modifying, amending or repealing the Solid Waste Disposal Act. Under the part of that Act known as the Resource Conservation and Recovery Act, the Environmental Protection Agency (EPA) has been considering so-called mine waste regulations. Many provisions being considered by EPA deal directly with the matters regulated in Section 201(n). This potential for overlap and inconsistency must be addressed in order to avoid an untenable situation for public lands mining activity.

Mr. LEHMAN. Thank you very much, Mr. Yearley. We know you have to leave early but hopefully we will be able to get to the questions. If you have to go, that would be fine.

Dr. DeVoto.

STATEMENT OF DR. RICHARD H. DeVOTO

Dr. DEVOTO. Thank you, Chairman Lehman, and Members of the subcommittee. I appreciate the opportunity to speak to you today on a matter of utmost importance to me and my company and to the economy of this nation.

I am Richard DeVoto, President and founder of Canyon Resources Corporation, an international mining company headquartered in Golden, Colorado. My side of the story will be the small side of the story compared to Mr. Yearley's side. I would like to make mine a personal testimony today as to how this bill as written would impact my company as I founded it 14 years ago.

Speaking today for my company as well as Independence Mining Company with whom we have been working on this bill, and we have provided some constructive testimony today for improvement of the bill as written, Canyon has been and will continue to be an advocate of Mining Law reform. We are here to help work with you, with the committee, to try and address some problems that we see in the bill as written today to make it a constructive improvement and something that will stabilize the uncertain framework in which we are operating today in this country in the pending legislation.

The bill as written has some excellent points in it. We believe, however, there are some imbalanced areas that need to be adjusted, and we are going to be making specific recommendations for changes. These recommendations we think will make this bill workable, fair, and progressive.

By way of background I should tell you I am both a civil engineer and a geologist. After receiving my doctorate from the Colorado School of Mines in 1961, I worked in the petroleum business, and then joined, as a professor of geology, and taught for 21 years at the Colorado School of Mines. It was during my career in teaching there that I formed with two other associates, the company, Canyon Resources, that I am now speaking for. That was in 1979.

During our private year as a company, we organized risk capital and explored for valuable mineral deposits throughout the Western United States, the South Pacific Basin and the Caribbean Basin. Today we are a publicly owned, NASDAQ-listed company, with direct shareholders, most of them American, who own an economic stake in our small entrepreneurial company.

During this time period, since 1979, we have raised $100 million, which has gone to create jobs and explore for mineral wealth mainly in this country. We have grown to the point of having 115 employees today with ambitions to employ as many as a thousand people in the next several years as several new mines come on stream.

Most of our employees are occupied and working in rural communities scattered throughout the Western United States. I must stress the economic value in these communities of our small company's operations, places like Lewistown, Montana, Lincoln, Montana,

Ridgecrest, California, and other locations. And I really want to emphasize the economic importance to these communities of our small company's efforts.

We started our first mine in Lewistown, Montana, in 1987, and today the Kendall gold mine is the second largest taxpayer in rural Fergus County, Montana. The 75 employees at that mine are enjoying wages two to three times the wages they earned prior to the mine's opening, wages they earned in the local community. And they are sharing in an aggressive productivity gains-sharing plan, every single person at the mine.

Two other locations of ours where we have projects in the development stage are mentioned in detail in the testimony. I won't read everything here that is in that testimony, but I could say that a project that we have joint ventured with, Phelps Dodge here in Lincoln, Montana, is a very aggressive program of employing 65 workers during the exploration stage, and the workers are involved to a high degree in community involvement, project managers on the local school board, the bench here has contributed to the X-ray machine in the local health clinic, computers to all the schools, classes in the local schools, and the like.

The project in the desert of California is near and dear to our heart. It is our next development project—the Briggs project, we call it. We have invested $10 million to date. We plan to invest another $30 million, and ultimately as the mine comes on stream, we will be employing 150 people and generating money in payroll, local taxes and goods and services.

I have got to mention that the royalty as proposed in this bill, 8 percent gross royalty, would not allow that project to go forward. There is no question about it. You put a pencil on that project, with the royalty provision in this bill, and that project will not go forward. This is a very specific project—and you are talking to the President—there is very much concern about the viability of that project, to accomplish all of these activities that made these economic and social contributions, while adhering to the most vigorous environmental standards, both self-imposed and as required by law.

We are particularly proud of Canyon's record. It has been recognized by both the U.S. Forest Service and the Bureau of Land Management for our reclamation performance in the past 10 years on our projects.

I can assure you that Canyon plans and desires to maintain its existence as a domestic mining company. Our future is in your hands. It is in the hands of this committee and the Congress regarding this legislation. There is no question that should this legislation pass as it is written today, that many of our projects will not get off the drawing boards.

I can state unequivocally that had this bill been in place as it is written today when I formed the company in 1979, I would not be here speaking to you today. Had it been in place when we went public as a public company in 1986, I would not be able to be here to be speaking to you today.

There are some economic terms in this bill which do not allow small entrepreneurial businesses to start and thrive on mining in the United States.

And I should hasten to add that we haven't paid a penny of dividends to our shareholders over this time period. Our shareholders have not gotten rich at the public trough for lack of royalty on public land.

Something that is near and dear to my heart also is that since the threat and uncertainty of this legislation has been posed since January of this year, the analytical community has commented on companies such as Canyon and others and the threats this legislation poses economically to our companies.

I can tell you today I have written in my testimony that our stock prices declined 20 percent since this bill was proposed, and I can now tell you it has been 35 percent. I wrote this four days ago.

This bill has a very strong immediate economic impact on mining enterprises in the United States.

Now, all of this can be changed, the political uncertainty and discouraging political climate, by the adoption of reasonable, rational and workable amendments to this bill. And I have written concerning four such proposed amendments in my written testimony. I would like to just touch on two here.

One clearly is the royalty provision. As some of you know, Canyon and Independence Mining Company have previously expressed sentiment for royalty in a limited context. We continue to make that statement. We think, however, the 8 percent gross royalty is punitive and destructive and in fact will yield a net loss in revenues to the Federal Government.

And clearly the example of the Briggs project that I mentioned earlier, if this law passes and the 8 percent royalty would prevail, not only would that royalty not be generated by that project, but the project as we would plan to place it in production now would generate taxes, revenues, wages and local advantages to the community, and all of those things would be lost. So this royalty would create a net loss on that project.

The fees as proposed, there is one thing I like a lot about the fee structure as proposed, and I would, in contrast to the last panel, that is the credit for real work, bona fide exploration and development work on projects to the minimum of $2.50 per acre. For a small company such as mine, that is a very, very important aspect of this bill.

I should tell you that when the appropriation process last year introduced and passed $100 per claim fee, which amounts to $5 per acre, to be paid in August of this year for each of the current year and the following assessment year, that that payment as contemplated will require 100 percent of my company's exploration budgets.

So 100 percent of my company's exploration budget is now to be expended in cash payments to the government as holding fees, and zero dollars are left to be available for real work, on the ground, to hire drillers and many workers on the ground to assess mineral value on the claims.

To me there is a counterproductive aspect of the polling fees, technically, when they escalate as rapidly as is proposed in the current bill. I would testify and argue for a decrease in the rate of increase of that rising polling fee as currently contained in the bill.

Once again, and in conclusion, I would like to reiterate, Canyon appears before you because we really do want to work towards a constructive bill which will accomplish the objectives of this committee and take the bill out of the area of uncertainty into something that is certainly.

If I haven't conveyed it yet, I want to tell you, I am speaking about my life and my livelihood. This is very important to me and my company. I sincerely hope our faith in the legislative process is not misguided.

I volunteer myself and my staff to work further and work and work and work on getting amendments to this bill. We will make it constructive, responsible, and work for all of us.

Thank you.

[Prepared statement of Dr. DeVoto follows:]

TESTIMONY OF

DR. RICHARD H. DE VOTO
President

CANYON RESOURCES CORPORATION

ON

H.R. 322

A bill to modify the requirements applicable to locatable minerals on public domain lands, consistent with the principles of self-initiation of mining claims, and for other purposes

BEFORE THE

SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES

OF THE

COMMITTEE ON NATURAL RESOURCES

U.S. HOUSE OF REPRESENTATIVES

MARCH 11, 1993

Mr. Chairman and members of the Subcommittee, I appreciate the opportunity to speak to you today on a matter of utmost urgency to me and my company and, without doubt, of similar importance to our economy and our nation.

I am Richard H. De Voto, President, Chairman, and founder of Canyon Resources Corporation, an international mining company, based in Golden, Colorado. Canyon's business is the exploration for, and acquisition, production, and sale of, precious metals and industrial minerals, primarily in the western States and the Dominican Republic. Formed 14 years ago, Canyon was selected in 1991 as one of the top 100 fastest growing public companies in America.

I am speaking primarily for my company today. However, we have been working closely with Independence Mining Company and a number of other like-minded mining companies in addressing H.R. 322 and other legislative proposals governing mineral activities on federal lands. Portions of my testimony reflect the views developed in this working relationship.

Canyon has been and will continue to be an advocate of responsible mining law reform. We are here to work with you in developing legislation embodying that reform. Our support of legislation is grounded on two fundamental premises. First, we believe the law warrants modernization. Our industry operates in a far more complicated economic and political setting today than

it did 12 decades ago when the basic statute -- the Mining Law -- was written. The Mining Law has served our industry well and we are understandably attached to it -- indeed, reliant upon it. Yet, as realists, we know the call for reform ultimately will be answered and the challenge for us is to seek amicable, not hostile change.

Second, our industry requires a stable legal structure in which to operate -- a structure that will not exist until this legislative activity is completed and behind us.

While we remain vocal proponents of mining legislation, we believe the final product must reflect a thorough understanding of and sensitivity to the conditions and constraints which companies such as ours face in our daily operations. The legislation we could support would achieve three primary objectives -- objectives which must be co-equal and which can and should be complementary. The legislation would --

-- encourage the domestic mining industry to continue to invest domestically on the federal lands, and provide jobs, taxes, wealth, and product for the economic well-being and security of this Nation and the local communities in which we live and work;

-- provide the federal government, which affords us the opportunity to conduct vital activities on the federal lands, with a fair return from those activities; and

-- embrace a distinct recognition of the importance of the many, diverse resources and values contained on the federal lands and ensure that those resources and values are protected or reclaimed during and after our presence there.

We commend the Committee's intention to seek early enactment of legislation addressing federal land mineral activities. Unfortunately, H.R. 322, as written, should not be that legislation. It will not achieve all three of the overarching legislative objectives which I have stated. Canyon believes that a number of the bill's provisions go well beyond what is necessary to achieve the environmental protection and fair return objectives, and, by doing so, make achievement of the economic well-being and security objective impossible. Indeed, we cannot find anything in the bill's provisions which is intended to achieve that economic well-being and security objective. Therefore, we will suggest generally here today, and more specifically during the subsequent deliberations of this Committee, improvements to H.R. 322 which we believe to be crucial to its ultimate effectiveness.

By way of background, I should tell you that I am both a civil engineer and a geologist. After receiving my doctorate at

the Colorado School of Mines, I first worked in the petroleum business and then became a professor of geology for 21 years at my alma mater. While teaching there, in 1979 I and two associates started Canyon Resources Corporation -- on a shoestring I might add -- as a private mineral exploration company.

For seven years thereafter, we organized risk capital financing and explored throughout the western United States, Australia and the South Pacific, and the Caribbean basin. Canyon became a public, NASDAQ-listed company in 1986, and today has more than 80,000 direct and indirect shareholders, mostly American, who hold an economic stake in our small but ambitious enterprise.

Since 1979, we have raised more than $100 million. We have built Canyon into a company that today enjoys $22 million in annual revenues and employs directly 115 people, and that intends to push its revenues to $70 million and its payroll to 1,000 employees in the next several years.

Our employees are located in diverse and largely rural locations at mine sites in Lewistown, Montana, and Fernley, Nevada; development sites in Ridgecrest, California, and Lincoln, Montana; exploration sites in Reno, Nevada, and the Dominican Republic; and corporation headquarters in Golden, Colorado.

Our company's importance to these communities should not be underestimated. We started our first mine in Lewistown, Montana,

in 1987. Today, the Kendall gold mine is the second largest taxpayer in rural Fergus County, Montana. The mine's 75 employees enjoy salaries 2 to 3 times the wages they earned prior to the mine's opening -- salaries that are enhanced by an aggressive productivity gain-sharing plan.

A joint venture of Canyon and Phelps Dodge Mining Company recently discovered a new world-class gold deposit in western Montana, near Lincoln. The venture has employed 65 workers during exploration and will grow to 350 employees during production. More than $20 million has already been spent on this project, generating jobs and creating tax revenues at the local, state, and federal level. The anticipated total investment in this project will exceed $150 million. At Lincoln, the venture has:

-- staff members serving on the local School Board and other community governmental entities;

-- purchased computers for every classroom in the local School District;

-- contributed an x-ray machine to the local clinic; and

-- assisted the U.S. Forest Service in marking and maintaining local cross country ski trails.

Canyon is currently seeking to permit and develop a new gold mine -- the Briggs project -- in the desert of southeastern California. We are particularly grateful to the Chairmen of this Subcommittee and the full Committee for their willingness last Congress to amend the California Desert legislation to facilitate the project. We have already invested $10 million in the Briggs project. We plan, upon completion of a full-scale Environmental Impact Statement now being prepared by the Bureau of Land Management, to invest an additional $30 million. That investment will:

-- provide employment for 150 workers in three counties of rural southeastern California;

-- sustain a $4.5 million annual payroll;

-- occasion annual purchases of goods and services worth $15 million;

-- generate the payment of $3 million per year in local, state, and federal taxes; and

-- support the same environmentally sensitive, employee-empowered strategy we have followed in previous projects.

I must say now, but will speak more of this later, that the Briggs project, and this Committee's legislative efforts to

facilitate it, are placed at grave risk by the royalty provision in H.R. 322, as written. Put simply, at 8% gross, we would owe the federal government much more than the total we anticipate on our bottom line from the project.

We have accomplished these activities and made these economic and social contributions, while adhering to the most rigorous environmental standards, both required by law and self-imposed. We are particularly proud of Canyon's environmental record -- a record that has been recognized by commendations from the U.S. Forest Service and the Bureau of Land Management for our reclamation performance over the past 10 years.

I hope I have left you with little doubt that Canyon intends to continue its growth with responsible exploration and development of mineral resources in the United States. We do not assume, however, that this growth will occur by our efforts alone. Our expectations, like those of many other mining companies, are truly dependent on the outcome of this Committee's and the Congress's deliberations on mining law legislation. As you have been told, many mining companies which have honored places in our economic history and are household names in our economic lives are moving their personnel, their investments, and, most importantly, their plans to foreign locales, where the legal bases are more stable and the policies are more hospitable. Make no mistake about this, in our dealings with other mining companies,

particularly in the last year, we have been repeatedly told "don't bring us projects on federal lands . . . we're going offshore."

I can state unequivocally that had H.R. 322, as currently written, been before the Congress in 1979 when Canyon was formed, we would have been unable to grow and succeed as we have. In other words, H.R. 322, as composed, would not have permitted the $100 million to have been expended in job creation, wages, and generation of public wealth. No law has given us a free ride; we have yet to pay a dividend to any of our shareholders. Had the law been H.R. 322, however, we would have had no history to boast about or shareholders to speak of. As proof positive that our fears about H.R. 322 are not idle, I can report that last week, in response to a New York analyst's expression of concern over the royalty provisions of H.R. 322, the stock price of Canyon Resources dropped 20%.

A dramatic improvement in this uncertain and discouraging political climate can occur with the adoption of reasonable, responsible, and workable modifications to H.R. 322.

I will mention four of the areas in which modifications are most necessary:

1. ROYALTY.

We understand, even if we do not share enthusiasm for, the perceived need for a royalty. As some of you may know, both

Canyon and Independence Mining Company have spoken for a royalty in limited contexts. As a company that has grown on the strength of its investment in exploration, Canyon has said that fees before production are more punitive to us than payment from net revenues after production begins. Our position, qualified as it is, is clearly not the industry's. I can tell you, however, that our concerns about the effects and form of any royalty are identical to those generally shared by all segments of the industry.

Put simply, an improperly-structured royalty can be self-defeating. Mining is a capital and cost intensive industry which is particularly sensitive to payments from gross revenues. We are different from the coal, and oil and gas industries in our ability to be responsive to royalties. With the price of our product set in world markets, with no ability to pass our additional costs on to the customers, and with most of the value of our product accruing upon production and not added downstream, the imposition of the gross royalty contained in H.R. 322 would be counter-productive. The industry will be unable to commit to the new production from which the royalties would be paid.

I mentioned our Briggs project in California. An 8% gross royalty at today's gold prices would be approximately $30 an ounce. Our plan of operation now being processed by the BLM will produce less than that total on our bottom line. If that royalty is imposed, lost will be not only the hypothetical royalty payments that would be generated by the project, but also the

public economic benefits of local, State and federal taxes, jobs, and purchases of goods and services. Our company, I suppose, has the option to go elsewhere even after all we have invested there, but those local communities which are counting on and are encouraging our project cannot follow.

In other circumstances, however, this industry is no more mobile than those communities. Companies contemplating new activities may have the freedom to consider the effect of any royalty before they make an investment, but those committed to existing operations do not. Existing operations are "sitting ducks" for any royalty because the investments have already been made . . . and on the basis of, and in reliance on, the economic ground rules set by the existing body of mining law.

2. UNSUITABILITY.

Frankly, I am quite surprised at the perceived need for an unsuitability process. We do recognize that some federal lands possess extraordinary non-mineral resources or values which must not be disturbed by mineral activities, and that the law should say as much. We believe, however, that Congress has already enacted the necessary statutes. Large areas have been declared off-limits to mining already in national park, wilderness, and other federal land legislation. Each Congress, additional bills are introduced and enacted to protect additional areas of the federal lands. Other legislation -- such as the Endangered Species Act, the Wild and Scenic Rivers Act, and the withdrawal

and Areas of Critical Environmental Concern provisions of the Federal Land Policy and Management Act -- provide authority to the land management agencies to take discretionary actions to bar future mineral activities on affected federal lands. Finally, the reclamation requirements of H.R. 322 will assuredly place additional federal lands beyond the reach of mining activities.

Furthermore, the unsuitability process ignores entirely the ability of technology to change and to provide us with continually improving capacity to conduct mineral activities that avoid environmental harm. There will be no opportunity to apply those technologies on land declared unsuitable under assumptions about past technologies. Even existing technologies may protect the environmental values for which an unsuitability determination might be made. Yet, we cannot know that until the extensive site-specific data collection, plan of operation preparation, and environmental impact statement writing for a mineral activity are completed . . . tasks that cannot occur if the land has already been determined to be unsuitable in prior large-scale, broad-based land use planning.

Perhaps legislating an unsuitability process for hard rock minerals appears attractive because Congress has already enacted such a process for coal. The analogy does not work, however. First, there may have been relatively few complaints about the functioning of the coal unsuitability process, but it simply has not been adequately tested because there has been so little

additional demand for federal coal since the process's adoption. There are more fundamental reasons, however, why the existing unsuitability process for coal is not automatically transferable to hard rock minerals. Coal is a more ubiquitous resource capable of development "elsewhere" whenever particular coal lands are designated unsuitable, and the presence of coal on affected lands is known at the time unsuitability is considered. Hard rock minerals, however, occur in far fewer and more discrete locations that are usually unknown to the land managers. Finally, the coal unsuitability process concentrated on a single mineral and a very few mining methods, whereas this legislation and any unsuitability process it would embrace would have to apply to many more, and more diverse, minerals and mining technologies.

At the very real risk of being misunderstood and somehow being perceived as endorsing an unsuitability process despite what I have just said, I will state that, if any unsuitability process were to be imposed upon this industry, it:

-- should be narrowly focussed on lands that host critically sensitive and unique resources and only when enough information is obtainable to be certain that mineral activities could not avoid any damage to or reclaim those resources;

-- should not usurp existing authority that allows such protection and reclamation to be offered to, and required by,

the agencies as a prerequisite for engaging in mineral activities;

-- should clearly exempt lands on which existing operations are underway, and adjacent lands to which operations can reasonably be expected to extend, at the time the unsuitability review occurs;

-- should be applied only during the agencies' normal planning cycles when plans are revised or significantly amended;

-- should not contain inflexible statutory standards, especially where such standards apply to lands for which the agencies already have discretion by law to constrain or eliminate mineral activities;

-- should encourage the establishment of unsuitability standards under a formal field-testing and rulemaking process at least as rigorous as that undertaken to develop coal unsuitability criteria by Interior Secretary Andrus in 1979; and

-- should not serve as a mechanism for delaying consideration of submitted plans of operation for exploration or mining.

3. FEES.

The provisions for royalties, holding fees, and user fees simply do not work together, except to extract cumulatively excessive payments from operators. For example, the holding fees in H.R. 322 escalate rapidly, presumably as an incentive for diligent development. Yet, under H.R. 322, these fees continue to escalate and the operator must continue to pay them even after the goal of diligence is met -- even after the mine is developed and the operator is required to pay royalties. That simply does not make sense.

Additionally, the levels of the fees were set in prior legislation before the royalty provision was added. If a royalty is imposed, the fees are no longer the sole revenue source and should be diminished so as not to discourage exploration. I say this with real conviction because just the $100 per claim annual fee enacted in the FY1993 Interior and related agencies appropriation act could consume 100% of Canyon's exploration budget over the next 2 years.

Finally, with the two revenue sources you have proposed -- the royalty and the holding fees -- no user fee can be justified. User fees are more typically imposed on federal land activities that do not return revenues. Given the revenues to be generated in this legislation, user fees are patently unfair, particularly when our industry has no way to audit or control the agencies' administrative expenditures which the fees are expected to defray.

4. RECLAMATION STANDARDS.

Finally, I would like to address the matter of statutory reclamation standards. I personally have a hard time understanding the need for such standards. I say this because my company already provides the environmental safeguards and performs the reclamation tasks that are addressed in H.R. 322's reclamation standards. Existing law and regulations -- the National Environmental Policy Act, Federal Land Policy and Management, National Forest Management Act, Clean Water Act, etc. -- assure our compliance so long as those laws and regulations are properly administered. Obviously, I cannot object on substantive grounds to those specific statutory standards which Canyon is already meeting in its existing operations. Those particular standards would meet the tests we would set for statutory reclamation standards if they are imposed on us: they must be achievable, recognize the diverse physical settings and mining methods to which the legislation applies, be capable of application by the land management agency without assigning land management decisionmaking to officials of other agencies, and not be applied retroactively to existing operations.

Under these tests, at least 3 of the standards proposed in H.R. 322 -- hydrologic balance, grading, and wildlife -- must be substantially reworked. Simply as an example, I refer you to the fish and wildlife provision. It is unrealistic to expect that disturbed habitat can be restored to equal or superior habitat --

conditions which existed prior to mineral activities, as H.R. 322 would require. The provision would not allow off-site mitigation, even if it would provide more acreage of habitat than that disturbed. It is even less reasonable to transfer responsibility for this provision to the Director of the Fish and Wildlife Service; the staff biologists of the Forest Service or Bureau of Land Management are fully capable of reviewing and deciding upon the wildlife components of plans of operation on federal lands. The Fish and Wildlife Service has not even been given this independent condition-setting power on federal land for endangered or threatened species under the Endangered Species Act; the Service simply advises the BLM and Forest Service on their actions affecting such species through consultation and the preparation of recovery plans. The Fish and Wildlife Service must not be given more direct control of federal land management activities for any and all wildlife than it has for endangered and threatened species.

* * * *

Once again, Canyon appears before you today advocating enactment of mining law reform legislation. Without such legislation, our future is cloudy. Yet, the stand we are taking is precarious, for, if the legislation passes without the vital modifications I have given as examples and others we hope to present to you as your Committee's deliberations ensue, our future will be all too clear -- we will not be able to grow as a domestic

company or contribute to the economic well-being of this Nation, indeed our very existence will be imperilled. I sincerely hope that our faith in the legislative process is not misguided.

Thank you for the opportunity to talk with you today. I volunteer myself and my staff for any further discussions you might wish on this legislation.

Mr. LEHMAN. Thank you very much. Mr. DeVoto, we appreciate that.

Dr. Dobra.

STATEMENT OF DR. JOHN L. DOBRA

Dr. DOBRA. Thank you, Mr. Chairman, very much for the opportunity to come and the invitation.

My name is John Dobra. I am Director of the Natural Resource Industry Institute and Associate Professor of Economics at the University of Nevada, Reno.

My testimony is primarily restricted to the impact of Section 410 of H.R. 322 which calls for gross royalty of no less than 8 percent on gross income from production of locatable minerals. Because recent attention has focused on a proposal for 12½ percent, the figures and numbers I will go through are based on that percentage.

However, a study which I will hold up and which you have been given contains a similar analysis for an 8 percent royalty. So both of those analyses are available to the committee and the staff.

This study is titled, U.S. Gold Industry, 1992, it was conducted in a joint project by the Economics Institute at the University of Colorado, Boulder, and by the University of Nevada, Reno.

The data that we are going to go through here is basically designed to answer a question that is commonly brought: What does it really cost to produce gold, how much money are they making? And the data that we are going to talk about covers 90 percent of the primary gold production in the U.S. So it is not 100 percent, but it is very close to a picture of the whole industry.

The first objective is to show the immediate impact of the proposed royalty on the industry's cost structure and financial viability. The second objective, which I will spend a little more time on, as I will go over the first one quickly, is, what will the impact of this be on the industry a few years down the road?

You heard Mr. Fields talk about the immediate impact. But you keep hearing things about the long-term impact. Well, what we have done is used our database to get a snapshot of what this industry could and probably will look like if prices remain where they are in the year 2000.

And then finally we will add a few comments on the issues related to tax equity and efficiency considerations that are raised by the gross royalty.

I would just point out that throughout this analysis we have used a spot price of gold at current levels to make the research current. We have not used hedging gains. I won't really comment on that. If you have questions, I would be happy to take them later too.

Look at the short-term impacts. We have a couple of charts here. The first one is to look at the cash cost to the industry. We want to take one brief minute to point out that this is a phrase, cash cost is a phrase you frequently hear in this industry, and it is a concept that is frequently misunderstood. So I want to take just a minute to explain what that is, and to help explain chart 1, which shows the curve for the industry with and without 12 percent royalty.

Just to explain that curve, what we have done is created a step function where the graph rises to the right, as you can see, and

each horizontal segment of that represents the production of 1 mine in 1 year. And the height of it represents the cost. So why do segments of that curve represent big mines, short segments represent little mines.

The dotted line represents cash cost without royalty. The solid line with. If you draw in the $330/oz. price of gold which we have done on the graph, you can see that without a royalty, there are a number of mines, the ones to the right or the far right, which are already operating at a negative cash cost. That means not only are they not making a profit, they are not even generating enough cash to pay their payroll, their power bill, and for their supplies.

By all rights these mines should be out of business right now. They stay open for a variety of reasons. When we shift the cost curve up because of the royalty, you can see that additional mines come into that category. There are approximately 4 or 5 mines that are currently in that condition, with a royalty that would triple. So there is an immediate impact on these very high-cost properties.

But it is important to point out, this does not reflect profitability. This simply reflects the ability to meet your current obligations with your cash flow. Many of these mines, even though their cost may be below the current price of gold, or cash cost, still may not be making a profit.

To look at profitability, look at graph 2. There are two important differences here. One is that we are including the cost of capital recovery here, and a modest 9 percent profit. The second point, though, if you go back to the cash cost curve, we are talking about 8.3 million ounces of 1992 production. We are now with this cost curve looking at the future of America's gold mining industry because we are talking about 65 million ounces of production that will be produced or could be produced between now and the year 2000, by 38 mines in our sample.

As you can see from the graph, without a royalty, approximately 47 million ounces of gold worth $15.5 billion can be produced at a profit. When we shift up the curve with the royalty, that number reduces down to about 19 million ounces that can be produced at a profit.

Table 1 should be of some interest to the committee as it considers alternate royalty schemes. What we do is show gross royalty impacts for no royalty, 2, 4, 6, 8, 10, and 12 percent rates. I won't spend a lot of time on it. The information is there for your staff to use or for you to look at, but I would point out that that group of high-cost mines is going to have the minimum required sales price to break even, go up for the average of that group to over $542 an ounce. For all intents and purposes, this will shut them down. Again, that is not a big number, but that high-cost group is very vulnerable.

It is important to point out, I am not trying to suggest there will be immediate mass closures of mines. I don't think that is the case at all. But there is that high-cost group that is clearly in danger, and they are likely to read the passage of this bill as a death notice.

I want to go quickly to the long-term impacts. We have tried to take these mines and look at three factors: the current production costs, the reserves, and the land status. What we have tried to do

is sort of get a picture of where this industry will be in the year 2000.

Land status, that is, being on public versus private land, being on public land does not automatically mean they will shut. But if they are on public land and have high costs or don't have sufficient reserves, the likelihood of their being shut is very high.

So we have gone through this group of mines that you see on this curve. And the group of 38 falls to 20 that will be operating in the year 2000.

We then go and look at some of the levels of production on table 2. What we are finding is that we are expecting gold production nationwide on both types of land to fall 23 percent; silver production, 88 percent; employment to fall 26 percent; payrolls to fall, again, about roughly 26 percent.

The impact on public lands is higher, 32 percent loss of production of gold; employment and payroll falling approximately 47 percent.

In Nevada, you get similar numbers in total, and on public lands as well. In terms of job losses, we are talking between 40 and 50 percent in terms of job losses.

So, final point, the royalty is in essence a tax. And as any tax, you have to consider equity issues and efficiency issues. Efficiency issues relate to whether or not it affects producers' decisions. This analysis clearly shows that in the long run, it will affect producers' decisions. It is inefficient.

Second, it is inequitable. It is not based on ability to pay; it is simply based on production. It ignores profitability.

It should also be pointed out that if we were talking about a net tax or a net royalty, these sorts of inefficiencies and inequities would not be as severe. But, of course, we have to deal with the law or the act as its written.

Final point. If you take these losses of production and employment and build them into an estimate of how much money this revenue would generate, numbers like $400 million a year, at least a few years down the line seem very improbable.

The National Wildlife Federation did a study that came up with that. Based on comparative numbers, we have overestimated gold revenues by a factor of 2; silver revenues by a factor of 36; copper revenues by at least a factor of 5. We find it even hard to believe that the budgeted number of $277 million a year is reachable.

I have attached a number of Wall Street type publications; one from Donaldson, Lufkin, Jeanrette; one from Leanne Baker of Salomon Brothers. I encourage you to look at the Salomon Brothers' independent estimate. They say they do not believe that revenues would be as high as $100 million. So you have a range there that is pretty wide. But I think you need to consider that the impact on production is much greater than what is being counted on in other places.

Finally, I guess, the point is that from the standpoint of resource policy, natural resource policy, this gross royalty will result in the wasting of significant mineral resources. And for that reason, it will result in lost jobs and the wealth of Americans will decrease.

Thank you, Mr. Chairman. If we can be of any further assistance, we will be happy to be.

[Prepared statement of Dr. Dobra and attachments follow:]

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Testimony

of

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Director, Natural Resource Industry Institute
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on

H.R. 322,

THE MINERAL EXPLORATION AND DEVELOPMENT ACT OF 1993

March 11, 1993

before

The House Committee on Natural Resources

This testimony is primarily concerned with the impacts of section 410 of H.R. 322 which calls for a gross royalty of no less than eight percent of the gross income from the production of locatable minerals. Because recent attention has focused on a proposed 12.5 percent gross royalty, the following analysis of the gross royalty proposal uses that percentage. An 8 percent gross royalty is analyzed in a recently completed study with my co-author, Paul Thomas, Vice President of the Economics Institute at the University of Colorado, Boulder. The study, entitled *The U.S. Gold Industry, 1992*, was conducted by the Economics Institute, University of Colorado, Boulder and the University of Nevada, Reno. It should be added that although he is not here, Paul Thomas has assisted in the preparation of this testimony.

The data used in this testimony came from a 1992 survey of U.S. gold producers conducted with the cooperation of The Gold Institute and covers approximately 90 percent of primary U.S. gold production.

The major points of this testimony are covered in the three sections:

1. The first objective is to show the immediate impact of the proposed gross royalty on the U.S. precious metals industry's cost structure and financial viability.

2. The second objective is to show the longer term impact of the proposed gross royalty. This analysis uses data on reserves, production costs and land status to determine which mines are likely to be operating in 2000.

3. Finally, the last section offers some concluding comments on tax equity and efficiency considerations and the implications of the gross royalty provisions of H.R. 322 for U.S. natural resource policy.

It should be pointed out that throughout these analyses we have used the current spot price of gold because my professors taught me, and I teach my students, that today's price is the best predictor of future prices. Any other assumed price would be speculative. In addition, we have not considered hedging gains because these gains (or losses) are not from the production of minerals which is the basis for the gross royalty described in setion 410 of the Act. Hedging is a financial transaction engaged in to reduce investors' downside risks. Generally, these financial transactions are not even conducted by the same companies involved in mineral production.

1. Short Term Impacts of the Proposed 12.5 Percent Gross Royalty

In the analysis of short term impacts, we have included all mines for which we have data regardless of whether or not they operate on patented or unpatented mining claims. There are several reasons for this decision: First, although most analysts that we have talked to believe that the gross royalty proposed in pending legislation would only affect mines on unpatented claims, there are contrary views. In addition, the problem of determining how much production comes from patented and unpatented claims is fairly complex. Although some mines are 100 percent patented or unpatented, many have a mix of claims. Consequently, as a first approximation of the impacts of the gross royalty, we are looking at how a cost increase of the magnitude of the proposed gross royalty would affect the economic viability of the industry. In later sections we look at differentials in impacts related to land status.

To show the impacts of the proposed 12.5 percent gross royalty, the first thing to consider is the short term impact on operators' cash costs. Cash costs do not reflect profitability because they do not include

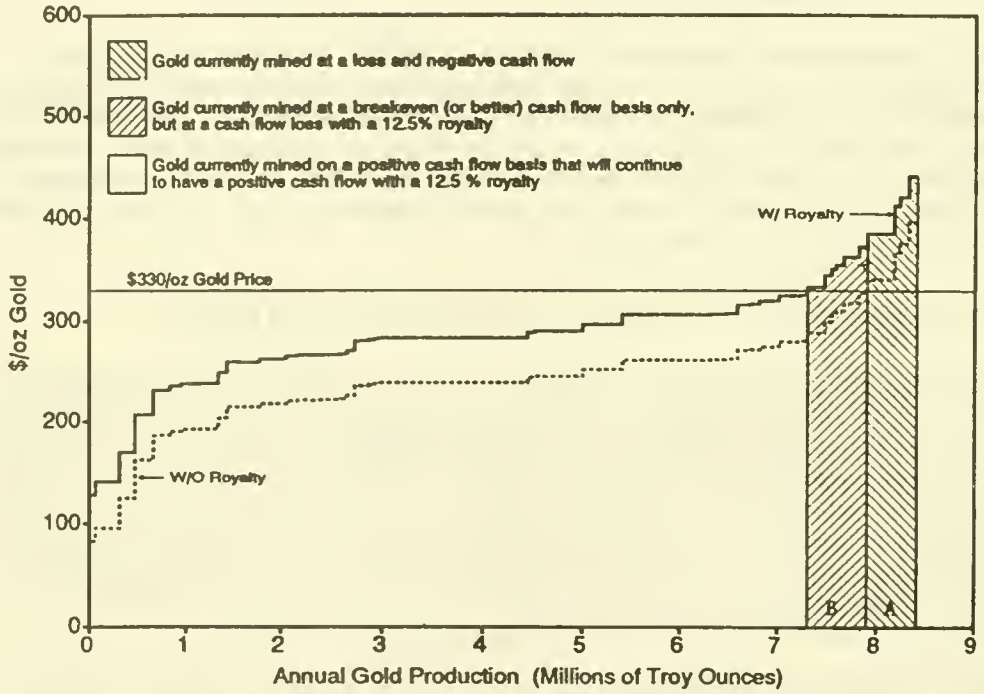
the cost of recovering capital investments. Cash costs simply reflect current obligations like labor, materials, energy, etc.

The U.S. precious metals industry cash cost curve is shown on Graph 1 titled, *Effect of 12.5 Percent Gross Royalty on 1992 Cash Costs*. The curve is a step function in which the width of each horizontal segment represents the planned 1992 production of one mine. The height of each segment represents the level of cash costs for that mine. The lower, dashed curve represents these producers' cash costs without a gross royalty. The higher, solid curve represents theses producers' cash costs with a 12.5 percent gross royalty.

At the current price of $330 per ounce, represented by the horizontal line drawn onto the graph, mines to the right of point A are currently operating with a negative cash flow and, according to some analysts, should already be closed. The increased losses resulting from the gross royalty are likely to hasten that decision.

Mines on the curve between points A and B are currently operating on a breakeven (or better) cash flow basis, ***although it is important to recognize that none of the mines in this range of the curve are profitable in the sense of generating even a modest return on investment in the long run at current prices.*** With the proposed 12.5 percent gross royalty, these mines will be pushed into a negative cash flow situation like those to the right of point A and are in imminent danger of closure.

GRAPH 1:
EFFECT OF 12.5 PERCENT GROSS ROYALTY ON 1992 CASH COSTS

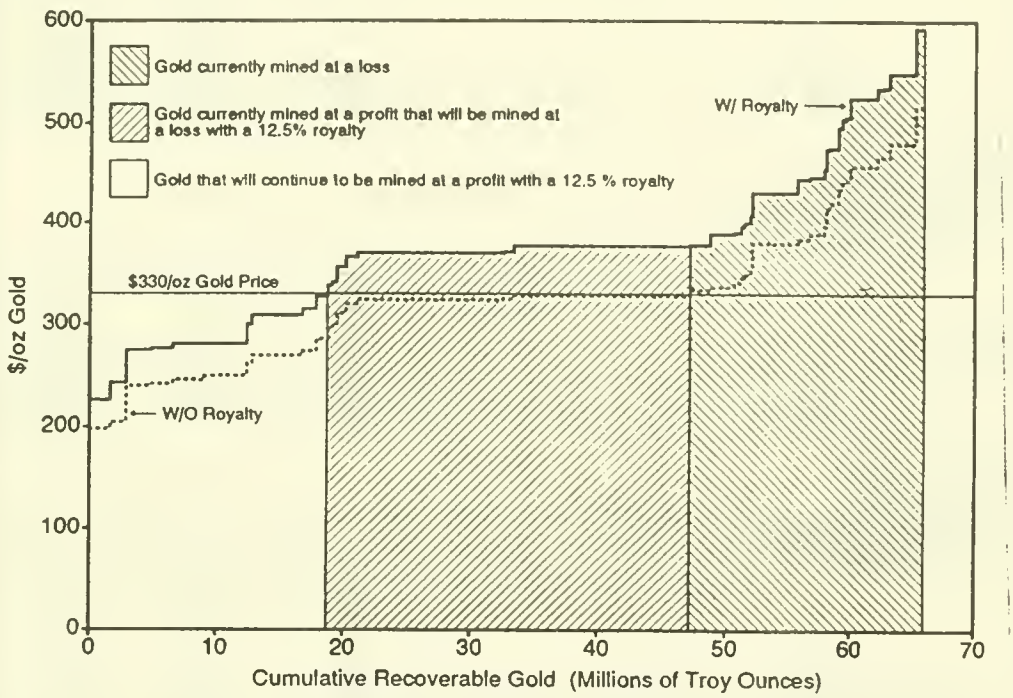


Graph 2, titled *U.S. Gold Reserves Recoverable at a Profit: Base Case and With a 12.5 Percent Gross Royalty*, shows the impacts of the proposed gross royalty on industry profitability. Like the cash cost curve, the width of each segment of the step function represents the production of one mine, and the height reflects that mine's costs.

There are, however, two important differences between the cash cost curve and Graph 2. First, the cost levels on Graph 2 are long run average total costs and include recovery of capital investment in the mine and a modest, 9 percent rate of return on investment to reflect the opportunity cost of capital. For this reason, the curve represents the minimum price required for each mine to break even on a long term basis. The second important difference between the two curves is that the cash cost curve represents 8.3 million ounces of gold produced in 1992 while the total cost curve represents 65.3 million ounces of cumulative production form 1992 to 2000 by the 38 mines included in the analysis. Hence, Graph 2 represents future production from proven U.S. reserves.

At a gold price of $330 per ounce and without a gross royalty, the graph shows that approximately 47 million ounces of gold, worth over $15.5 billion can be produced at a profit. When the cost curve shifts up as a result of the gross royalty, however, the quantity of gold that can be produced at a profit falls to approximately 19 million ounces.

GRAPH 2:
U.S. GOLD RESERVES RECOVERABLE AT A PROFIT:
BASE CASE AND WITH A 12.5 PERCENT GROSS ROYALTY



These results are reinforced by an analysis of Table 1, which breaks the industry into three costs groups: High-cost producers with long run average total costs (LRATC) over $400 per ounce; mid-cost producers with LRATCs between $301 and $400; and low-cost producers with LRATCs of $300 or less. The table shows the increases in the LRATC of these groups with royalties of 2, 4, 6, 8, 10 and 12.5 percent. Again, the LRATC represents the minimum required sales price of gold for the operation to break even.

TABLE 1:
INCREASE IN WEIGHTED AVERAGE LONG RUN AVERAGE TOTAL COSTS (LRATC) FOR THE U.S. GOLD INDUSTRY FROM A GROSS PROCEEDS ROYALTY DISAGGREGATED BY COST CATEGORY

	No. of Mines	Cumulative Production 1992 - 2000 (Mil. Ozs.)	LRATC ($/Oz.)	Increase in LRATC ($/Oz.)	Marginal Increase in LRATC ($/Oz.)
INDUSTRY TOTAL	38	65.3	331		
LOW-COST MINES					
LRATC < $300/oz.	12	19.1			
Gross Proceeds Royalty (%)					
Without Royalty			257		
2			262	+5	
4			267	+10	+5
6			273	+16	+6
8			279	+22	+6
10			285	+28	+6
12.5			**294**	**+37**	**+9**
MID-COST MINES					
LRATC $301-$400/oz.	16	38.6			
Gross Proceeds Royalty (%)					
Without Royalty			340		
2			347	+7	+7
4			354	+14	+7
6			361	+21	+7
8			369	+29	+8
10			377	+37	+8
12.5			**388**	**+48**	**+11**
HIGH-COST MINES					
LRATC >$400/oz.	10	7.4			
Gross Proceeds Royalty (%)					
Without Royalty			479		
2			483	+10	+10
4			498	+20	+10
6			504	+27	+11
8			516	+42	+11
10			527	+54	+12
12.5			**542**	**+69**	**+15**

In the high-cost category are 10 mines accounting for 7.5 million ounces of cumulative production between 1992 and 2000. These are also the same mines that find themselves in a negative cash flow situation described above. While we cannot predict what the operators of these mines will do in the face of a 12.5 percent gross royalty, it is hard to believe that they will stay open. Their group average minimum required sales prices will rise from $473 per ounce to $542, making the chances of their recovering their capital investments fairly remote.

At the other extreme, the 12 low-cost mines, accounting for 19.1 million ounces of cumulative production, will see their minimum required sales prices rise from $257 to $294 per ounce. While these mines will continue to make a profit with the proposed gross royalty, they are getting close to a notoriously volatile gold price.

Perhaps the key point, however, is that the mid-cost mines, which includes 16 mines, expected to produce 38.8 million ounces, or over one-half of national production form 1992 to 2000, are put into jeopardy by this gross royalty proposal. This group's minimum required sales prices is currently $340 per ounce without gross royalty which, with the benefit of forward sales, allows them to break even or do so slightly better at current prices. With the gross royalty, this group's minimum required sales price rises $48 to $388 per ounce.

It is important to note that this does not imply that there will be immediate mass closures of mines if this proposal is adopted. Clearly, however, mines which are currently experiencing negative cash flow at current prices are likely to read this as a death notice. While only five or six of the mines in our database are currently in that situation, the proposed 12.5 percent gross royalty will, at a minimum, triple that number.

More significantly, however, the proposed 12.5 percent gross royalty will have a significant adverse impact on the major base properties of the U.S. gold industry.

2. Long Term Impacts of the Proposed Gross Royalty

The objectives of this section are to focus on the long term impacts of the gross royalty proposal on production, employment, and payrolls nationwide and in Nevada.

In projecting the impact of the proposed gross royalty, we have focused on what the U.S. gold industry will look like in the year 2000 if this gross royalty is passed. To determine which mines are likely to still be operating in 2000 a three step filtering process was employed. The criteria used were:

a. *Production Costs*

Mines with production costs over $450 after the imposition of the gross royalty were assumed to close unless continued operations appear likely based on the two following criteria, i.e., unless they have large reserves and are on private land.

b. *Reserves*

Mines without sufficient reserves to maintain current levels of production through 2000 were assumed to close. Experience has shown that reported reserves can be misleading since many mines operating today report as many or more reserves than when they

opened. However, the assumption employed is that unless the mine has extremely low production costs or is on private land, the gross royalty will make it unlikely that new reserves will be developed because higher returns will generally be available from developing reserves on private lands or in foreign countries. The combination of low gold prices, the unsecured nature of property rights in mineral resources on public lands resulting from mining law reform, and, finally, the inequitable gross royalty proposed by H.R. 322, will make development of new reserveson U.S. public lands impractical.

c. *Land Status*

In general, if mines are known to be operating on private land it was assumed that they will continue operating through 2000 unless they have reported insufficient reserves or extremely high costs. In cases where the land status of a mine was unknown, it was assumed that the mine would pay a gross royalty. As it turned out, no mines were projected to close purely on the basis of land status, however, land status combined with high costs and low reserves did lead us to project the closure of numerous properties.

Using these criteria, the list of 38 operating mines in the U.S.for which we have long run operating data was reduced to a list of 20 mines expected to still be in operation in 2000. Table 2, below, provides summary data for these mines in 1992 and projected data for 2000. Note that in making these projections we have assumed that these mines will not cut back on their rates of production, employment and payrolls. This assumption is almost certainly incorrect, making this an "optimistic" projection.

Table 2 shows precious metals production, employment and payrolls (for mine and mill workers only) broken down four ways: Total U.S.; U.S. Public Lands; Total Nevada; and Nevada Public Lands. We point out that we have only included mine and mill workers employment and payrolls to make an important point about the impact of the proposed gross royalty: This legislation will have its greatest impact on American working people who drive trucks, operate shovels and maintain equipment. The professional staffs of these companies will be less affected since they will be developing, designing and overseeing operations in other parts of the world. Hence, it will be the blue-collar worker, often a union member, who will bear the burden of this legislation.

As would be expected, the impacts on mines on public lands is greater than the total. Total U.S. gold output is expected to decline by 23.5 percent and a similar decline is expected in Nevada. A somewhat higher decline in production from public lands is expected: 32.3 percent nationally, and 29.5 percent in Nevada.

Differentials in the impact on private versus public lands for employment and payrolls are significantly greater because of the expected closure of numerous small, high cost, low reserve properties on public lands. U.S. public land mine and mill employment and payrolls are expected to decline by approximately 47 percent. Expected declines in Nevada public land employment and payrolls are expected to be around 44 percent.

TABLE 2:
U.S. PRECIOUS METALS INDUSTRY, 1992 AND 2000
WITH A 12.5 PERCENT GROSS ROYALTY

	1992	2000	Percent Change
U.S. TOTALS			
Gold Production (1,000 ozs.)	7,686	5,882	-23.5
Silver Production (1,000 ozs.)	13,917	1,688	-87.9
Employment	11,679	8,611	-26.3
Payrolls ($1,000)	$519,040	$384,380	-25.9
U.S. PUBLIC LAND TOTALS			
Gold Production (1,000 ozs.)	5,391	3,650	-32.3
Silver Production (1,000 ozs.)	13,570	1,341	-90.1
Employment	6,224	3,287	-47.2
Payrolls ($1,000)	$268,059	$140,459	-47.6
NEVADA TOTALS			
Gold Production (1,000 ozs.)	5,738	4,461	-22.3
Silver Production (1,000 ozs.)	12,527	426	-96.6
Employment	7,845	5,995	-23.6
Payrolls ($1,000)	$365,800	$283,807	-22.4
NEVADA PUBLIC LANDS TOTAL			
Gold Production (1,000 ozs.)	4,337	3,059	-29.5
Silver Production (1,000 ozs.)	12,508	408	-96.7
Employment	4,562	2,550	-44.1
Payrolls ($1,000)	$199,479	$112,028	-43.8

The large impact on U.S. silver production in all categories results from the fact that all silver production accounted for here is by-product production and, by coincidence, happens to be produced by the higher costs mines with lower levels of reserves. Low prices, combined low cost foreign production, have closed U.S. primary silver producers.

3. CONCLUDING COMMENTS

Generally accepted principles of taxation hold that taxes, or in this case a gross royalty, should promote allocative efficiency and achieve horizontal and vertical tax equity. The promotion of allocative efficiency involves not distorting producers' decisions which, in many cases refers to reductions in output

and employment that result from taxation. Principles of horizontal and vertical tax equity are related to ability to pay: Those with equal ability to pay should pay the same and those with greater ability to pay should pay more.

Holding the proposed gross royalty up to these standards yields fairly disappointing results. From an equity standpoint, equally profitable mines producing different levels of production will pay different royalties. Hence, the proposal is not horizontally equitable. In addition, larger unprofitable mines will pay higher royalties than small, highly profitable mines. Hence, the proposal is also vertically inequitable, and fails both tests of tax equity.

With respect to the implications of the gross royalty for allocative efficiency, the analysis of the long term impacts in section 2, suggests that the proposed gross royalty will generate significant inefficiencies. Job losses and payroll reductions between 40 and 50 percent at operations on public lands by the turn of the century is a very significant burden for the economies of producing states like Nevada to bear. Also recall that this is a fairly optimistic projection because we have assumed that operations on public lands will continue their current levels of staffing and production with the gross royalty. It is not unlikely that with this gross royalty and current prices, U.S. production from public lands could fall to one third of its current level by the end of this decade, eliminating a similar proportion of the jobs now created.

It should also be pointed out that a modest royalty or net income wuld not have the serious tax equity and allocative efficiency problems associated with tlie proposed gross royalty.

As a result of the large cutback in gold production from public lands that we foresee as a consequence of the proposed gross royalty, estimates of the revenue that the gross royalty would raise are highly suspect. For example, estimates by the National Wildlife Federation (NWF) which estimate close to $400 million (*The Last Free Lunch on the Old Frontier: Hardrock Mining and the Reform of the 1872 Mining Law*) is a case in point. We suspect that the NWF has over estimated gross royalty revenues from gold by a factor of 2 and revenues from silver by a factor of 36.

In the case of copper production, the NWF estimates assume that 25.5 percent of U.S. copper production comes from public lands, an estimate that differs substantially from what we have been told by copper producers. Copper producers and industry analysts that we have contacted have consistently maintained that the percentage of copper from public lands is small. We believe that the NWF has over stated revenues from copper royalties by at least a factor of 5, and probably more. Since copper and gold are the two biggest revenue producers (silver is the fourth largest) we think that the NWF estimate is grossly overstated. Even more modest revenue estimates, like the $277 million administration estimate, are difficult to substantiate. One Wall Street analyst (Leanne Baker, Salomon Brothers, *U.S. Mining Law of 1872 - (Costly) Change Coming*, March 8, 1993) projects revenues of "no more than $100 million", an estimate which we would give more credence.

From the standpoint of natural resource policy, which is the both the purview of this Committee and the interest of the scholars associated with the Natural Resource Industry Institute at the University of Nevada, Reno, the gross royalty provisions in section 410 of H.R. 322 represents a serious threat to U.S. mineral production capabilities. The gross royalty will result in the "wasting" of significant proportion of U.S. precious metals resources. This "wasting" will occur because in the face of higher production costs resulting from the gross royalty, producers will raise their cut-off grades, leaving millions of ounces of lower grade materials in the ground. Hence, jobs are lost, and the wealth of the American people is reduced.

UNITED STATES
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RESEARCH

MARCH 8, 1993

Metals and Mining

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U.S. Mining Law of 1872 — (Costly) Changes Coming

A Premium for International Diversification?

- We believe that changes will be made to the Mining Law of 1872 this year. Hearings begin on March 11 and March 16 in the U.S. House and Senate, respectively, on bills that would introduce an 8% gross proceeds royalty on hard-rock minerals extracted from Federal land. The Clinton budget proposes a 12.5% royalty.

- Other proposed changes in the law would make it increasingly expensive and cumbersome for mining companies to explore for and develop minerals on Federal land. We believe that the passage of these provisions would accelerate and intensify the companies' shift toward exploring and developing projects elsewhere — a trend that already is well under way. Over time, we believe that the investment community will reward, rather than penalize, the shares of mining companies that are diversified internationally.

- The proposed changes would exert only a modest effect on mining companies' earnings in the 1994-95 period, in our view. With only a few exceptions, the major U.S. gold and copper mines operate on land that is patented — or otherwise non-Federal. Beyond 1995, however, the impact of a royalty and other provisions would be more severe.

MINING LAW OF 1872 — THE BATTLE LINES ARE DRAWN

The U.S. Government this year appears prepared to make sweeping changes in the Mining Law of 1872 — a statute that has encouraged prospecting, development and extraction of minerals in the public domain for more than 120 years. Virtually all of the proposed changes would hurt the U.S.-based mining *industry* — but this does not imply that it would hurt all U.S.-based mining *operations* or *companies*. Indeed, all of the gold companies that we follow are insulated to some degree against changes in the Mining Law, at least over the next several years (see Figure 1).

The most onerous proposal would apply a gross proceeds royalty on hard-rock minerals extracted from Federal land. Bills introduced this year by Senator Dale Bumpers (D-Arkansas) and Representative Nick Rahall (D-West Virginia) would phase in an 8% royalty on the value of minerals extracted. The Clinton Administration's proposed budget includes a 12.5% royalty. The two legislative proposals also would make permanent a new law that requires a $100 annual payment for each mining claim.

It is too early to measure the precise impact of these proposals on mining companies and their U.S.-based mining operations, for several reasons:

- The U.S. Government measures mineral production, but neither the U.S. Bureau of Mines nor the Bureau of Land Management measures the portion of mining that occurs on Federal land. The General Accounting Office (GAO) estimated that in 1990, about one third of U.S. gold production and one quarter of U.S. silver production occurred on Federal land. The GAO valued the minerals produced on Federal lands at about $1.2 billion and the value of total hard-rock mineral production at $8.6 billion.

- Individual mining operations may occur on land that is a patchwork of private and Federal land. In theory, the Mining Law of 1872 enables miners to file mining claims and to explore, develop, mine, and sell minerals from those claims; furthermore, a claim holder can obtain a patent — or fee simple title — after proving that an economically minable discovery exists. In actuality, a mine may exist on patented land, while the support facilities, waste dumps, roads, and tailings ponds exist on unpatented claims.

- Mining companies will attempt to anticipate adverse changes in the law. For example, companies with current operations or new discoveries on Federal land are applying for patents, with the expectation — or the hope — that they will be "grandfathered" into the legislation and not have to pay a royalty. Some are far along in the process, while others are not. American Barrick Resources and Amax Gold Inc. have received "first-half certificates" for the Goldstrike Meikle and Sleeper Mines, respectively — and likely would be excluded from a royalty provision.

- We believe that most Government estimates overstate the potential revenues that the proposed royalties would generate. For example, the Clinton budget assumes that a 12.5% royalty would bring $277 million in revenues by fiscal year 1997. We believe that it would be no more than $100 million. Moreover, the Clinton estimates do not account for the fact that the royalties would be tax-deductible and would reduce taxable income to the companies. The new $100 annual fee on mining claims already is prompting companies to drop all but their most prospective claims, which also will reduce actual Government receipts relative to current projections.

There is no question, however, that the proposed royalties would have an adverse impact on mining operations where it would apply. Our preliminary research and discussions with companies suggest the following general conclusions:

- In general, the companies with long-lived deposits and that have longevity in the U.S. mining industry have patented the mining claims that they use in actual mining operations. Through the patenting process, the land has moved from the public to the private domain.

- The proposed changes likely will have a greater effect on gold operations than on copper, molybdenum or other hard-rock minerals. U.S. gold mines tend to be newer — and shorter-lived — than most of the major base metals operations. Over the years, the patenting process has become more and more costly and cumbersome, and some mining companies chose to develop mines without applying for patents. (Opponents of the Mining Law cite the low $2.50-$5.00 per claim patenting fee as a justification for a Federal royalty; the Bureau of Land Management estimates that it costs a minimum of $38,000 per claim to obtain a patent. Moreover, miners have patented only about 3.2 million acres of land out of a total of 727 million acres, while the Federal Government itself has withdrawn about 135 million acres from mining use.)

- Changes to the Mining Law would influence the future viability of the U.S. mining industry more than it would affect current operations. Many of the new — and, as yet, unpermitted — U.S. gold discoveries are on unpatented Federal land. These include Battle Mountain/Crown Resources's Crown Jewel deposit, Placer Dome's Pipeline (and South Pipeline) deposits, Phelps Dodge/Canyon Resources Seven Up Pete deposit, and Newmont Mining's Grassy Mountain deposit.

- Some of the mining projects now in development are on patented land by virtue of their location in historic mining districts — for example, Magma Copper's Robinson Mine in Nevada, Echo Bay Mines's Alaska-Juneau Mine and Hecla Mining's Grouse Creek project in Idaho.

In Figure 1, we list the U.S. mining operations and prospective deposits of the gold companies that we follow. We estimate that these companies will produce 5.3 million ounces in 1993, including about 525,000 ounces from mines operating on unpatented Federal lands (about 10% of the total).

Figure 1. U.S. Gold Mines and Major Deposits — Production and Royalty Impact, 1993E-95E

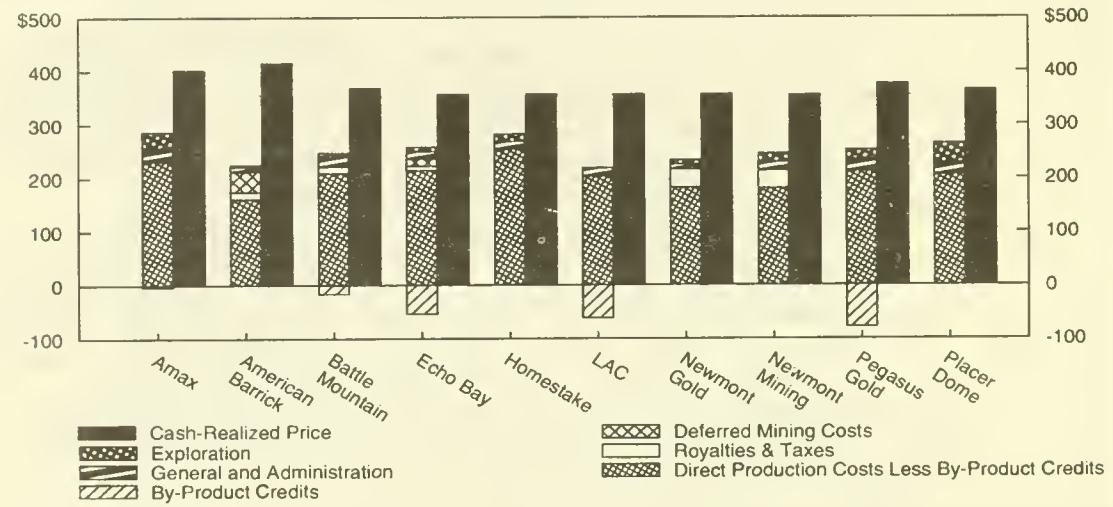
	U.S. Mines/ Deposits	Patented	Unpatented	State or Private	Production[a] 1993E	1994E	1995E	International Diversification
Amax Gold	Sleeper	✓[b]			145	150	140	Chile
	Hayden Hill		✓		100	145	145	
	Fort Knox			✓	—	—	325	
	Haile			✓	—	—	—	
American Barrick	Goldstrike	✓b			1,325	1,546	1,781	Nothing to date; offices in Mexico
	Mercur	✓			110	110	110	and Chile
	Meikle/South Meikle	✓b			—	—	—	
Battle Mountain	Battle Mountain	✓[c]			92	52	121	Major entrant in Bolivia. Through
	San Luis			✓	70	69	69	Nuiguini Mining: Chile, Australia, Lihir
	Crown Jewel		✓		—	—	70	
Echo Bay	McCoy/Cove		✓d		300	300	300	Lupin Mine in Canada
	Round Mountain	✓			160	160	160	
	Kettle River	✓e			65	70	70	
	Alaska-Juneau			✓	—	—	—	
	Kensington			✓	—	—	—	
Homestake	Homestake			✓	410	410	410	Canadian operations, Australia, Chile
	McLaughlin	✓			270	265	260	
Lac Minerals	Bullfrog		✓		290	275	275	Canada, Chile
Newmont Gold	Genesis/Post/Gold Quarry	✓[f]			1,700	1,700	1,500	None
	Deep Post			✓	—	—	—	
	Deep Star			✓	—	—	—	
Newmont Mining	Ivanhoe		✓		—	—	—	Uzbekistan, Peru, Indonesia, and
	Grassy Mountain		✓		—	—	—	elsewhere
Placer Dome	Golden Sunlight			✓	105	105	100	Canada, Chile, Papua New Guinea, and
	Bald Mountain		✓		85	85	80	elsewhere
	Cortez/Pipeline		✓		50	45	45	

[a] Ounces in thousands. [b] First-half certificate. [c] 95% of Battle Mountain Complex is on patented Federal land. [d] Under patent application. [e] 88% of Kettle River is on patented Federal land. [f] 94% of Newmont's current total reserves is on patented Federal land or state/private land.
Source: Salomon Brothers Inc.

ROYALTIES — A HIT TO GOLD MINING COMPANIES

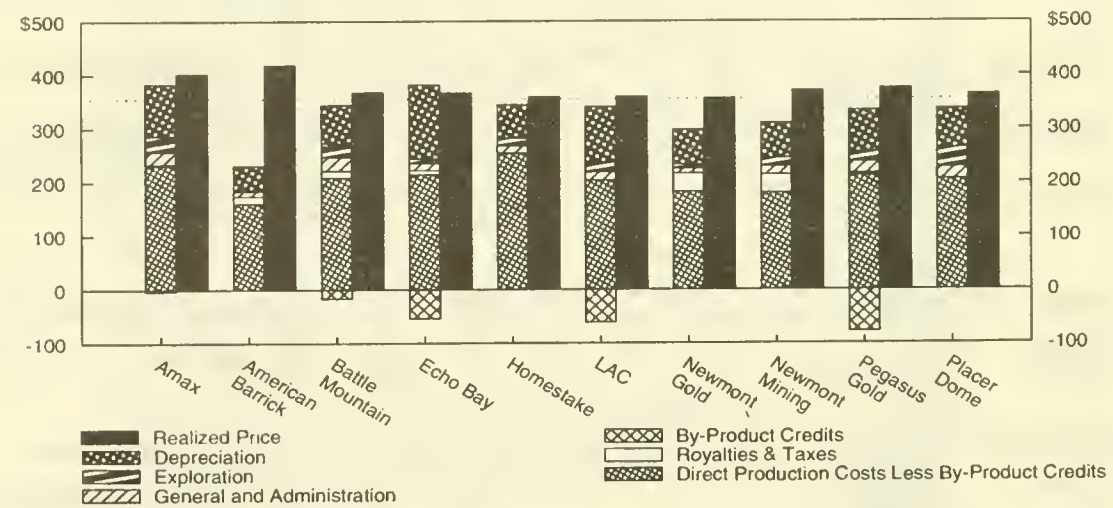
The proposed Federal royalty comes at an inopportune time for the North American gold mining industry. At close to $330 per ounce, the price of gold is at a seven-year low, and many of the companies that we follow already are losing money or are near break-even. A 12.5% gross proceeds royalty would add $41 per ounce to the cost of producing gold, while an 8% royalty would add $26. Figures 2, 3 and 4 show our 1993 estimates of cash and operating costs for the major North American producers. Our operating margins include cash production costs (excluding deferred mining costs), exploration, general and administration, and depreciation, but not taxes, interest or provisions for return on capital.

Figure 2. North American Gold Companies — Cash Margins, 1993E (Dollars Per Ounce)



E Salomon Brothers Inc estimate.
Source: Salomon Brothers Inc.

Figure 3. North American Gold Companies — Operating Margins, 1993E (Dollars Per Ounce)



E Salomon Brothers Inc estimate.
Source: Salomon Brothers Inc.

Figure 4. North American Gold Companies — Cost and Profit Margins Per Ounce, 1993E

	Amax Gold	American Barrick	Battle Mountain	Echo Bay	Homestake	Lac Minerals	Newmont Gold	Newmont Mining	Pegasus Gold	Placer Dome
Direct Production Costs	$235	$160	$225	$268	$254	$258	$182	$180	$288	$205
Royalties/Resource Taxes	2	14	13	8	0	0	34	33	4	0
Deferred Mining Costs	0	38	0	14	0	0	0	0	0	0
By-Product Credits	(3)	0	(16)	(54)	0	(64)	0	0	(77)	0
Cash Production Costs	$233	$212	$221	$236	$254	$194	$216	$213	$215	$205
General and Administration	24	10	26	14	14	16	9	16	24	22
Exploration Costs	29	3	26	8	14	19	8	16	24	36
Total Cash Costs	**$286**	**$224**	**$273**	**$258**	**$282**	**$229**	**$233**	**$245**	**$263**	**$264**
Depreciation/Amortization	96	44	71	138	62	103	65	65	77	73
Total Costs	**$383**	**$269**	**$344**	**$396**	**$344**	**$332**	**$297**	**$310**	**$340**	**$336**
Realized Price	400	417	366	365	357	358	355	369	373	363
Realized Price Less Noncash Gains	400	413	366	355	355	355	355	353	373	363
Operating Margin	$17	$186	$22	$(17)	$14	$27	$58	$59	$33	$27
Cash Operating Margin	114	189	94	97	75	126	122	108	110	100

E Salomon Brothers Inc estimate.
Source: Salomon Brothers Inc.

NEAR-TERM BATTLES — AND A LONGER-TERM WAR

The U.S. mining industry is mounting a campaign to fight the more burdensome provisions of the Clinton budget proposal and the proposed changes to the Mining Law of 1872. The near-term focus likely will be a fight against the proposals for a gross proceeds royalty on hard-rock minerals extracted from Federal land. The mining industry is more unified than it has been in previous years, when its forces were divided: Some in the industry had fought any effort to change the law, while others argued that the industry should support changes that would reduce the emotional pitch of the debate — such as mining companies' paying the market value of land to be patented or letting patented land revert back to the Federal Government once mining was completed. During the Bush years, proposed changes to the Mining Law never passed the committee stage, and if they had, the mining industry was confident that the President would have vetoed any onerous changes.

This year, the tables have turned — President Clinton has included in his budget a royalty more onerous than any previously proposed in Congress. In any case, the debate remains in the early stages. We expect the mining industry to press the following points:

- A gross proceeds royalty will cost jobs. The mining industry offers high-paying jobs, a cause that the President has endorsed.
- The United States is a net exporter of gold and copper, the two minerals that would be affected most dramatically by a royalty.
- The mining industry is international in scope. Companies have choices about where to spend exploration dollars and where to develop mines. Mineral companies tend to move, over time, toward those countries that support mineral development and minimize regulatory delays. The royalty and other proposals now before Congress — those requiring that reclamation plans be filed before exploration begins, for example — will exacerbate the trend of mineral companies to move exploration dollars away from the United States and toward more favorable environments.
- Investors likely will reconsider the concept of "political risk" as it applies to the United States. In general, many U.S. investors have tended to favor mining companies with operations in the "stable" United States and not in countries or parts of the world where political risks were perceived to be higher. The successful international diversification of such companies as Placer Dome and Lac Minerals — with others, like Battle Mountain Gold and Newmont Mining Corporation, bringing new offshore gold production into production this year — should shift the nature of investor perceptions.

Investment Code (for a six- to 12-month time horizon)

U.S. equities are coded against the S&P 500; Japanese equities are coded against the Tokyo Stock Price Index (TOPIX); equities from other countries are coded against the appropriate local index.

Buy: Expected to outperform the market. **Hold:** Expected to match the market. **Underperform:** Expected to underperform the market.

Liquidity Code (based on 20 prior trading days)

U.S. stocks are coded based on a descending scale of 1-5, with 1 representing the most liquid quintile of the S&P 500 based on the dollar value of shares traded. The quintile ranges are printed each week in the *Equity Research Weekly*.

Salomon Brothers Inc actively trades in the securities of Amax Gold, American Barrick, Battle Mountain, Echo Bay, Homestake, Lac Minerals Newmont Gold Newmont Mining Pegasus Gold and Placer Dome for its own accounts and those of its customers. Accordingly, we may have a long or short position in these securities at any time. As of March 4, 1993, we had long positions in the common shares of Echo Bay Mines, Homestake Mining, Newmont Mining, and Placer Dome. As of the same date, we had short positions in the common shares of Homestake Mining and Newmont Mining.

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March 11, 1993

The Honorable George Miller, Chairman
Committee on Natural Resources
U.S. House of Representatives
Room 2205 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

At a $330 per ounce gold price an 8% royalty on gold output would levy a $26.40 and a 12.5% royalty a $41.25 per ounce burden on U.S. gold production from federal lands. We estimate the pretax costs of the 15 largest North American gold producers at $304 and 18 smaller producers at $326 per ounce.

This suggests that the larger producers would fall to breakeven under an 8% and lose $15 per ounce under a 12.5% royalty and that the smaller companies, which do not enjoy economies of scale in production, exploration or administration, would lose $22 per ounce under an 8% and $37 under a 12.5% regime.

The financial results of some companies would be hurt very badly, since some companies have very low and others very high pretax costs. Franco-Nevada, Euro-Nevada, Freeport-McMoRan Copper and Gold, Hemlo Gold, American Barrick, Teck Corp. and Newmont Gold are examples of companies having pretax costs at or below $275. However, five of those seven companies operate no mines in the U.S.

Crown Resources, Nerco, and Coeur d'Alene Mines have current pretax costs above $400. FMC Gold, Battle Mountain, LAC Minerals, Amax Gold, Echo Bay Mines, Atlas Corp., and Hecla Mining have costs between $350 and $400. USMX Inc., Rayrock Yellowknife, Homestake Mining and Dickenson Mines all have costs between $330 and $350. Newmont Mining, TVX Gold, FirstMiss Gold, Royal Oak, Pegasus Gold, Cambior and Canyon Resources have costs between $300 and $330. Roughly 80% or 17 of the 21 higher cost companies with pretax breakevens above $300 operate primarily in the U.S. Thus, the several lower cost companies operating outside the

U.S. or as royalty holders skew the average costs structures, which appear very adverse to U.S. producers.

We have long argued that the "cash costs" that some gold mining companies calculate understate true costs, since they exclude exploration costs averaging $30 per ounce, royalties, the Nevada net proceeds tax, reclamation expense, interest expense, corporate administration and depreciation. Moreover, some gold mining companies include short-life truck fleets, shovels, tailing pond extensions or capitalized stripping in their depreciation that is excluded from cash costs, and we believe those items truly are variable costs.

We believe that pretax costs truly are larger than we have estimated. Most companies have postponed necessary exploration programs due to the six year decline in gold prices since 1987. Many companies have delayed necessary infrastructure development programs as well. The infrastructure of underground mines, for example, resembles that of an office building turned upside down. Typically the preparation of mining zones for production two or three years ahead represents 25% of the costs of underground gold mines.

We believe that many companies have delayed necessary mine development costs simply to survive. For example, the 1991 Homestake Mining annual report acknowledged that mine output fell in 1991 at its South Dakota mine because of a shortage of developed mining "stopes," or working places. The Coeur and Galena underground silver mines in Idaho shut down after extended periods of operation with $4.50 per ounce direct mine production costs, and we believe they deferred $1.50 per ounces of costs by delaying development, curtailing exploration, avoiding narrow veins and focusing on richer veins. Thus, we believe costs truly are higher than our own calculations indicate.

We estimate that the proposed federal royalties would generate perhaps $50 million of initial revenue initially. However, they would probably *reduce* total revenues by their third to fifth years because they would encourage the shutdown of existing mines, discourage the development of new reserves near existing mines, discourage the construction of new mines, and discourage exploration for new mines.

In fact, mining companies began to redirect their exploration dollars to Latin America, the Southwest Pacific and CIS in 1989 following the Valdez oil disaster in Alaska, which heralded a period of intense environmental scrutiny. The initial debate of the Bumpers legislation calling for an 8% federal royalty on mining from federal lands also has encouraged exploration abroad. In fact, these proposals probably have decreased federal tax revenues before they have been implemented.

In many western states mining provides one of the few forms of high wage employment available. Mining towns often are isolated communities with little diversity to their economies. A large social cost will be felt in these small communities as the mining companies withdraw.

Thus, some form of federal disaster relief should be provided for mining communities to accompany the proposed federal royalty, in my opinion. For example, the loss of 25,000 mining jobs and 50,000 satellite jobs might require $75 million in annual federal relief if as little as $10,000 per person in welfare benefits were provided. Of course, some losses to the balance of trade and real GNP would be felt as well as losses to tax revenue and increases in relief expenditures.

Some recent analyses of ours including a discussion of gold industry accounting practices (dated 2/8/93), gold industry pretax full costs (1/7/93 pages 8 rightmost column and 16) and (2/2/93 page 14 rightmost column) and a letter of instructions to participants in our annual gold conference to please correctly describe all of their costs (12/10/92 paragraphs six and seven) are included as exhibits.

Faithfully yours,

John C. Tumazos

cc: Members, House Committee on Natural Resources

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GOLD
GROWTH THROUGH DISCOVERY

JOHN C TUMAZOS *504-4233*

January 7, 1993
1993-92

GOLD MINING INDUSTRY

Gold Mining Companies Must Prepare for Another Tough Year To Insure Survival

These remarks were prepared in advance by John C. Tumazos for presentation as moderator's comments at the 1993 DLJ Gold Exploration Seminar in New York on January 12-13.

LONG-TERM REASONS TO FAVOR GOLD

We do not expect today's gold prices to last, and believe that longer-term gold prices need to be roughly $100 per ounce above current levels to sustain gold output in the five largest gold producing nations around the world. At present the global gold mining industry is not replacing reserves nor maintaining underground mine development schedules.

Jewelry consumption, which has exceeded mine output each year since 1989, is a particular favorable underpinning to gold prices. Although jewelry demand growth has approached 9% in 1992, we have simulated gold markets in 1993-1996 based on a 4% demand growth rate that is more consistent with global population and GNP growth rates. Our estimate of 2% decay rate in global gold mine output suggests that the annual supply shortfall in the gold market will increase by more than 6% of consumption or over 125 metric tonnes annually. We estimate that the disinvestment necessary to balance the market will rise from 130 metric tonnes in 1991 and 292 in 1992 to 387 in 1993 and 815 by 1996 (Table 1), which represents 33% of prospective gold supply by 1996. We do not believe that central banks, mining company forward sales, European institutions, Middle Eastern sheiks or individual investors are likely to dishoard on that scale. Several prominent North American gold mining companies no longer hedge, for example.

Global Gold Supply and Demand (metric tonnes)

	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996
Global Mine Output	1271.8	1303.0	1366.0	1452.2	1506.5	1578.8	1649.0	1743.6	1919.0	2063.8	2132.1	2156.6	2180	2155	2100	2071	2010
Western Scrap	493.0	244.1	243.3	294.1	291.4	317.4	490.2	431.8	350.8	359.8	490.0	409.5	400	425	425	425	450
Total New Supply	1764.8	1547.1	1609.3	1746.3	1797.9	1896.2	2139.2	2175.4	2269.8	2423.6	2622.1	2566.1	2580	2580	2525	2496	2460
Western Jewelry	513.2	798.2	935.6	842.4	1092.9	1187.1	1167.8	1214.5	1531.8	1907.0	2036.7	2111.1	2300	2392	2488	2587	2691
Western Electronics	95.2	92.8	88.8	106.4	130.4	114.4	123.0	124.0	132.7	136.5	147.8	146.7	147	150	153	156	159
Western Dentistry	64.3	65.2	60.6	51.3	52.4	53.3	51.1	47.7	50.5	50.9	52.7	55.3	55	55	55	55	55
50% of W. Official Coinage	122.5	113.5	81.7	88.0	62.6	61.6	169.2	103.2	70.8	65.9	59.1	75.1	65	65	65	65	65
W. Indus., Decorative, Medals	102.8	91.1	93.9	86.7	88.2	68.0	67.4	71.6	78.2	82.3	84.7	88.2	85	85	85	85	85
Former Communist Use	110.0	120.0	130.0	140.0	150.0	160.0	170.0	180.0	190.0	200.0	210.0	220.0	220	220	220	220	220
Total Demand	1008.0	1280.8	1390.6	1314.8	1576.5	1644.4	1748.5	1741.0	2054.0	2442.6	2591.0	2696.4	2872	2967	3066	3168	3275
Implied Investment	756.8	266.4	218.7	431.6	221.5	251.8	390.7	434.5	215.8	-18.9	31.2	-130.3	-292	-387	-541	-672	-815
Cumulative Investment	756.8	1023.2	1241.9	1673.4	1894.9	2146.7	2537.4	2971.8	3187.6	3168.7	3199.8	3069.6	2778	2391	1850	1178	363

Source: Gold Fields Services for historical data; DLJ Estimates for Forecasts and Former Communist Demand History

Clearly, the twin U.S. deficits, low interest rates in the United States, a gradual end to the credit crunches in America, Japan and Europe, and the expansionary policies of the new Administration may benefit gold. It is no accident that the dollar weakened 2% following the announcement of Senator Lloyd Bentsen as the Treasury Secretary nominee. Traditionally, gold and other commodity prices rebound as the global economy grows.

Most important, current gold prices are too low to sustain the gold mining industry. Our estimate of 2% annualized mine output decay from 1993 to 1996 may prove generous if gold prices continue to drop. Most new gold mine projects around the world do not offer 10% pretax returns below a $400 per ounce gold price. It is a given that all commodity markets eventually recover after a sustained period of low prices force participants to exit, and gold's demand growth profile provides some added comfort.

NEAR-TERM IMPEDIMENTS TO A GOLD PRICE RALLY

The gold market has several hurdles to overcome before it can rally: 1) the tendency of the U.S. dollar to appreciate in the second half of 1992, 2) stubborn Bundesbank tight monetary policy with 8% German long-term interest rates, 3) gradual 2% M2 money supply growth rates in the United States, 4) generally tight bank credit conditions globally, 5) investor fears of central bank bullion reserve liquidations, 6) investor fears of gold mining company forward sales, 7) continued private disinvestment and 8) general investor disinterest.

None of these problems is insurmountable. Gold prices now have fallen in nominal terms for five straight years, however, since peaking near $500 an ounce in mid-December 1987 and averaging $486 for that month. Average prices have dropped from $446 in 1987 to $437 in 1988 to $381 in 1989 to $384 in 1990 to $362 in 1991 to roughly $344 an ounce in 1992. This is the longest period of sustained gold price decline since gold price decontrols from the $35 per ounce level began to be implemented in 1968. Gold price volatility has contracted along with the gold price, which has added to investor disinterest.

Twenty-six months have passed since the Federal Reserve began to attempt to ease monetary policy in November 1990 in the midst of the Persian Gulf Crisis. Commodity price deflation has continued despite bond and stock market rallies, lower U.S. interest rates and six straight quarters of U.S. real GNP growth. Now that an "end of recession" rally seems tardy in the United States, the next hopes will be center on either an "end of German or Japanese recession" or else simply waiting for a traditional cyclical peak in commodity pricing several years from now.

REVISED GOLD PRICE FORECASTS

We have reduced our gold price forecast to $345 per ounce from $370 for 1993 and to $360 from $400 for 1994. We have remained at $400 for 1995 and 1996 and $425 for 1997-2000. We have reduced our earnings estimates for most of the gold mining companies for 1993 and 1994 accordingly (see Table 3). Our reduced gold price forecasts are not consistent with economics necessary to sustain output in the five principal gold producing regions: South Africa, the United States, the Commonwealth of Independent States (CIS), Australia and Canada. The arithmetic involved in reaching gold prices of $370 per ounce for 1993 requires nearly a $400 fourth quarter average to offset recent prices near $335, which seems farfetched at the moment in view of near-term monetary, exchange rate and inflation trends. Oil prices have not been sufficient to encourage North American reserve replacement for two decades, and the temptation to expect a $100 price rally

simply because gold mining economics require it may be cause for folly. Only three of the 35 major South African gold mines—Kloof at $247, Driefontein Consolidated at $205 and Elandsrand at $248—had working costs at competitive levels in the September quarter. Twenty of South Africa's major mines had costs over $300 an ounce.

OUR INVESTMENT RATINGS REFLECT A FAVORABLE BIAS TOWARD WELL FINANCED GOLD COMPANIES

Our emphasis of gold shares continues to center on the better financed firms that may be able to seize opportunities in the current tough market environment. We are also attracted to the major Carlin Trend companies, whose long-term exploration prospects may benefit from the fertility of their landholdings. Concentration on the better financed companies will be the best strategy until a robust gold price rally to well over $360 develops.

We currently include ***American Barrick*** and ***Newmont Mining*** on our *Recommended List* due to their superior finances, superior cost positions and mine development efforts. We rate ***Coeur d'Alene Mines*** *very attractive* owing to the company's cash balances of more than half its stock market value and the potential of silver prices to rebound as well as gold. We recently reduced our investment rating for ***Canyon Resources*** to *neutral* from an *Analyst's Buy* because the continued poor gold price environment has made it tougher for Canyon to raise the capital necessary to maintain its ownership stakes and develop its properties. We rate ***Battle Mountain, Crown Resources, FMC Gold, LAC Minerals, Newmont Gold, Pegasus Gold*** and ***Placer Dome*** *moderately attractive* as well, which connotes a 5-20% expected return in DLJ's rating criteria. We rate ***Echo Bay Mines, Teck Corp., Homestake Mining*** and ***Freeport-McMoRan Copper and Gold*** *neutral*, and ***Amax Gold and Freeport-McMoRan Inc.*** *unattractive.*

LACK OF ACCESS TO CAPITAL FOR GOLD MINING FIRMS

North American gold mining firms face the most hostile business climate imaginable today. Most companies cannot afford exploration programs, those lucky enough to have discovered new deposits often cannot finance or obtain environmental permits to extract their resources, the North American environmental atmosphere is hostile, the $8.90 one-year COMEX gold price contango provides a mere 2.7% one-year return for hedging activities, commercial banks are reluctant to lend for development of gold deposits having more than $200 per ounce in direct mining costs as today's gold prices provide little margin for a desirable threefold interest coverage ratio on a long-life property, the SEC may someday ask gold mining companies to apply current prices to their annual reserve disclosures, common equity offerings are not available to many firms and even a stronger concern like ***Newmont Mining*** had to resort to a relatively expensive 5.5% convertible preferred to raise capital. ***Echo Bay Mines*** and ***FMC Gold*** have had their joint venture partners abdicate mining properties to them, which may be an increasing trend.

Gone are the days of $450 per ounce spot prices, 10% one-year contangoes in excess of spot prices, gold bullion loans at 2% annual costs, easy common stock offerings at 35 times earnings, Canadian flow-through exploration shares or European investor interest. There are no longer: 1) a tent city along the Humboldt River on the east side of the Carlin Tunnel, 2) a 90-day waiting list for reputable hotels in Battle Mountain, 3) a need for analysts to phone mining companies to borrow a bed in their geologists' trailer apartments in Battle Mountain, 4) fully booked flights to Elko or Ely or 5) reasons to make a reservation for a rental car in Elko.

STRATEGIES TO INSURE SURVIVAL FOR ANOTHER YEAR OR TWO AT ANOTHER 5% GOLD PRICE DECLINE

Past speakers at our annual seminar included ***Galactic Resources, Northgate Exploration,*** and ***International Corona***, which have not survived after implementing financial strategies requiring gold prices nearer to $400 an ounce. ***Freeport-McMoRan Gold Co.*** has chosen to sell out, winning better returns for its shareholders in a falling gold market. ***Homestake Mining, Amax Gold, LAC Minerals, FMC Gold, Placer Dome, Battle Mountain, Pegasus*** and others have made acquisitions in the 1989-1992 time frame that could have been made less expensively if the buyers had waited.

Clearly a prudent manager must have a realistic contingency plan for another 5% decline in gold prices to perhaps $310 per ounce that extends for another year or two. One unpleasant scenario involves a "saucer-shaped" bottom in which prices simply stay near current levels. Gold mining companies that are producing less than 400,000 ounces annually or have less than a $400 million stock market capitalization appear more vulnerable since they have least access to equity markets or lenders. A prudent investor must consider the same contingencies in order to measure risk and returns.

In our view, only five companies in the smaller size class under 400,000 ounces of future gold output or $400 million in stock market value are completely secure financially. ***Franco-Nevada*** and ***Euro-Nevada*** have cash balances and virtually no operating expenses or capital investment requirements. ***Teck Corporation*** has a strong balance sheet, low costs at its Hemlo units and substantial nongold assets. ***FMC Gold and Coeur d'Alene Mines*** each have cash balances of more than $150 million even if their reduced mine operations do not generate much new cash next year.

The remaining companies in the smaller size class below the top 14-sized producers must 1) take measures to avert a liquidity crisis in the next two years and 2) preserve the upside potential for their shareholders' values to recover in the future. Simple cost controls applied to operations, exploration or administration cannot generate enough cash for some companies.

Some organizations face capital commitments to continue existing operations, develop new mines, repay debts or fund losses. None of the means to raise external capital today is attractive. The public equity market, debt markets, bank loans, joint venture opportunities or outright asset sales are all depressed. We do not expect bank lenders to renew credits in view of the anemic interest coverage ratios or relatively short reserve lives that the typical gold property offers today. We do not expect outside auditors, common stock underwriters or the SEC to strictly police the use of the word "reserve," although clearly "reserves" that do not offer a 5% return on capital at current gold prices have limited resale value.

The shareholders of a public company do not benefit when it issues stock at low prices in desperation to bridge a short-term funding need. It would be better to sell the entire concern at the market price or perhaps a modest premium rather than drive the stock price down by issuing shares into a depressed market.

MERGERS AND CONSOLIDATIONS EMINENTLY LOGICAL

Buyers remain available when entire companies are put up for sale. The underfinanced companies, whether larger or smaller sized, have their best opportunity to preserve shareholder value in merg-

ing with stronger companies in common stock exchanges, which offer upside recovery potential to the shareholders of both firms.

The larger-sized firms ought to save at least $10 million in annual administrative and exploration expenses and the smaller companies at least $4 million annually via mergers. ***Homestake Mining*** estimates that it will save $25 million annually simply from cutting 180 administrative and exploration personnel before considering other merger savings.

Assuming reasonable exchange ratios can be agreed upon, the losers in a merger are the shareholders of illiquid concerns or the redundant employees. The reluctance of large shareholders to recognize lost value or the anxieties of potentially redundant senior managers may delay the occurrence of some obvious mergers.

Notwithstanding, it appears that perhaps one-third of the North American gold mining companies under 400,000 ounces in size or $400 million in market value and perhaps several of the larger concerns will merge into larger concerns in 1993 or 1994. We applaud this trend because it will create larger, better capitalized investment vehicles with reduced aggregate administrative expenses. We do not expect the creative activity of unemployed exploration personnel to be lost inasmuch as such individuals usually resurface at smaller, emerging firms.

APPROPRIATE ROLE OF WELL-CAPITALIZED FIRMS IS TO SEIZE OPPORTUNITY

We cannot stress enough that the appropriate role of the well-capitalized or cash-rich firms is to seize opportunities. ***American Barrick, Newmont Mining, Placer Dome, RTZ, Minorco, Teck Corp., LAC Minerals, FMC Gold, Coeur d'Alene Mines, Franco-Nevada*** and ***Euro-Nevada*** are the best positioned companies to make acquisitions from the standpoint of liquidity. As the most probable cash buyers on the market they can choose among the potential sellers. Of course, numerous other players may enter the fray in common stock-based acquisitions.

Several of these fine firms decline to acquire gold properties, however, owing to the poor financial returns that acquisition candidates offer. For these reasons ***Placer Dome, Teck Corporation, Cambior, LAC Minerals, Minorco, Anglo-American*** and ***RTZ*** recently have bought into copper or zinc properties. The redeployment of capital or development expertise into base metals poses a threat to the underfinanced gold producers that wait until it is too late to decide to sell out. Clearly the companies unable to find mating partners face unpleasant financial realities until gold prices rebound markedly.

UPDATED GOLD MINE VALUATION MODELS

At present the market values the top 15 North American gold producers at roughly $1,525 per ounce of estimated 1996 output, $128 per ounce of recoverable reserves as defined to exclude higher cost "reserves," roughly 12 times estimated 1993 cash flow and roughly 25 times estimated 1993 earnings (Table 2). Average valuations have been relatively stable considering the erosion in gold prices and unfulfilled investor expectations of recent months.

The usefulness of the price/earnings ratios as analytic tools is debatable today. At least one-third of the top 15 gold producers and at least half of the smaller companies are not likely to report prof-

Table 2

NORTH AMERICAN GOLD VALUATION MODELS

Company	Price 1/4/93	Rank By Size	Output 1996E Net Gold-Equiv Thous. Oz	Total Cap.Per Oz. 1996E Output	Price to Cash Flow 1992E	1993E	1996E	P/E 1992E	P/E 1993E	P/E 1996E	Capitaliz. (Class 1)	Reserves (Globally)	Net Debt + Cap. Exp. / Mkt.Cap.	1996E Production Per share (.01 oz)	1996E EPS Change To $10 Gold in cents/share
Placer Dome Inc#	11.25	1	1956	1133	8.7	8.7	8.7	26.8	29.6	25.0	301	179	19%	0.76	3.8
Newmont Mining#	40.50	2	1720	1772	21.3	22.5	12.5	29.6	36.8	20.3	160	139	24%	2.31	18.0
Newmont Gold Co#	31.25	3	1700	1811	20.8	18.4	13.0	39.1	34.7	20.8	154	154	12%	1.62	12.6
American Barrick#	30.38	4	1668	2783	17.4	13.2	10.5	24.3	17.4	13.8	172	172	13%	1.14	8.9
Homestake Mining#	10.63	5	1400	1111	12.5	11.2	11.8	NM	NM	42.5	102	102	50%	1.03	7.2
Freeport-M Cu+Au	22.13	6	1093	2023	19.1	20.9	11.3	33.0	40.2	18.0	NM	74	16%	0.50	2.5
LAC Minerals #	5.00	7	917	783	5.6	6.3	5.6	NM	NM	33.3	124	92	42%	0.61	3.1
Echo Bay Mines#	4.75	8	730	945	7.3	7.9	5.9	NM	NM	21.6	59	59	122%	0.60	4.2
Battle Mountain#	5.00	9	557	1075	12.2	8.3	4.5	NM	NM	14.3	313	114	112%	0.66	4.6
Cambior	9.34	10	550	643	6.5	5.3	4.4	29.2	25.2	19.9	295	128	105%	1.49	7.5
Pegasus Gold	14.00	11	497	923	8.8	8.5	7.0	NM	41.2	23.3	133	133	62%	1.52	10.6
Santa Fe Pacific#	13.00	12	475	NM	NM	NM	10.8	16.3	13.0	9.3	99	NM	13%	0.26	1.8
Hemlo Gold	6.00	13	460	1099	10.9	10.9	10.0	17.6	17.6	21.4	72	72	0%	0.48	2.4
Amax Gold Inc	8.50	14	403	1810	17.6	15.5	10.0	35.4	NM	50.0	384	209	87%	0.54	3.8
TVX Gold	1.97	15	401	1083	5.6	6.0	3.9	24.6	32.8	11.6	284	71	84%	0.22	1.5
Teck Corp	13.27	16	350	384	13.3	12.6	7.6	29.5	29.5	11.1	29	29	5%	0.43	2.1
Royal Oak Mines	1.50	17	340	321	7.5	5.4	4.3	9.4	7.5	5.0	55	55	18%	0.45	3.1
FirstMiss Gold	5.63	18	225	581	4.8	4.5	4.7	23.4	18.8	22.5	104	104	59%	1.25	8.8
Nerco#	12.00	19	219	NM	NM	NM	NM	NM	12.6	12.0	456	NM	201%	0.46	3.2
Hecla Mining#	7.50	20	194	1454	15.0	14.7	10.7	NM	NM	NM	189	189	77%	0.43	3.0
Coeur d'Alene	10.50	21	188	408	NM	NM	8.4	NM	NM	52.5	46	39	11%	0.50	3.5
Agnico Eagle	4.25	22	178	810	7.1	7.7	7.1	NM	21.3	17.0	111	111	32%	0.56	4.0
FMC Gold Co@	4.38	23	175	952	6.7	10.9	15.6	19.0	NM	NM	104	104	-25%	0.24	1.7
Bema Gold	0.62	24	116	209	NM	NM	1.6	NM	NM	2.1	61	16	289%	0.30	2.1
Glamis Gold	4.06	25	115	742	5.6	5.1	4.1	50.8	29.0	16.3	95	95	26%	0.55	3.8
Crown Resources*	6.75	26	100	875	NM	NM	6.1	NM	NM	7.5	109	109	-5%	0.73	5.1
Franco-Nevada	20.65	27	100	2726	25.8	19.7	11.8	25.8	19.7	11.8	151	151	-11%	0.68	4.7
Dickensoo Mines	3.00	28	95	965	10.0	10.0	5.0	42.9	55.6	12.0	78	78	84%	0.46	3.2
Rayrock	8.06	29	90	849	7.3	6.0	5.4	NM	NM	26.9	130	130	84%	0.55	3.9
Atlas Corp.	4.88	30	80	386	6.7	7.5	4.9	NM	NM	NM	75	75	130%	1.26	8.8
Canyon Resources*	1.75	31	80	727	6.3	17.5	8.8	NM	NM	NM	36	36	122%	0.27	1.9
Euro-Nevada	12.58	32	75	2397	44.9	36.0	15.7	44.9	36.0	15.7	120	120	-16%	0.44	3.1
USMX INC.	2.63	33	60	523	13.1	12.2	5.8	NM	NM	13.1	42	42	5%	0.40	2.8
Avg Valuation of top 15 Producers				**1357**	12.4	11.7	**8.7**	27.6	28.9	23.0	189	**121**	**51%**	0.92	6.2
Avg Valuation of Smaller Producers				**900**	12.4	12.1	**7.5**	27.9	28.8	22.1	110	**87**	**60%**	0.55	3.8

Comments: (1) to calculate "total Cap. per ounce of production" we added the stock market capitalization to debt-equivalents and subtracted cash and securities. We converted silver output into gold at the current ratio of 90 to one.

(2) In our earnings sensitivity to metals price changes we assumed a 50% marginal tax rate for Quebec, Ontario and Papua New Guinea and a 30% marginal tax rate elsewhere.

(3) Some valuation ratios are lower because their mines have short lives or do not generate free cash flows. Thus, interpretation of these ratios depends on inferred asset quality.

(4) "Class 1" reserves are located in the U.S., Canada and Australia, while "global" reserves include all properties worldwide.

(5) We have excluded negative or extreme outlying data points in our calculations of industry average valuations above. [4]

Source : Donaldson Lufkin & Jenrette

Table 3

TRADITIONAL VALUATION MEASURES

Company	EPS and Gold Price						Cash Flow Per Share						Book Value Per Share				ROE	ROE	Price/ Book	1993E Pretax Breakeven
	$382 1989	$384 1990	$362 1991	$344 1992E	$345 1993E	$400 1996E	1989	1990	1991	1992E	1993E	1996E	1990	1991	1992E	1993E	1992E	1993E	1993E	Price
Placer Dome Inc#	0.45	0.81	-0.94	0.42	**0.38**	0.45	0.94	1.29	1.25	1.30	**1.30**	1.30	7.51	6.26	6.43	6.56	6.6%	5.9%	171%	$290
Newmont Mining#	1.87	5.06	1.39	1.37	**1.10**	2.00	2.10	1.75	1.70	1.90	**1.80**	3.25	1.47	2.97	3.74	4.24	40.8%	27.6%	955%	$305
Newmont Gold Co#	1.13	1.35	1.20	0.80	**0.90**	1.50	1.85	2.14	1.75	1.50	**1.70**	2.40	5.85	7.00	7.75	8.60	10.8%	11.0%	363%	$275
American Barrick#	0.30	0.45	0.68	1.25	**1.75**	2.20	0.77	0.89	1.15	1.75	**2.30**	2.90	4.81	5.97	6.98	8.60	19.3%	22.5%	353%	$250
Homestake Mining#	0.65	0.21	-1.30	-1.10	**0.00**	0.25	1.05	0.54	0.27	0.85	**0.95**	0.90	8.14	6.64	3.62	3.42	-21.4%	0.0%	311%	$345
Freeport-M Cu + Au	0.58	0.56	0.58	0.67	**0.55**	1.23	0.89	0.96	0.89	1.16	**1.06**	1.96	1.15	1.21	3.21	3.16	30.3%	17.3%	700%	$200
LAC Minerals #	0.31	-0.53	0.12	0.04	**-0.06**	0.15	0.60	0.96	1.04	0.90	**0.80**	0.90	4.85	5.30	5.23	5.06	0.8%	-1.2%	99%	$355
Echo Bay Mines#	0.16	-0.60	0.07	-0.09	**-0.15**	0.22	0.97	0.91	0.87	0.65	**0.60**	0.80	4.37	4.62	4.46	4.24	-2.0%	-3.4%	112%	$375
Battle Mountain#	0.40	-0.24	-0.02	-0.60	**-0.05**	0.35	0.80	0.87	0.68	0.41	**0.60**	1.10	3.58	3.94	3.29	3.19	-16.6%	-1.5%	157%	$355
Cambior	0.62	0.68	0.38	0.32	**0.37**	0.47	0.99	1.44	1.33	1.43	**1.75**	2.10	8.68	8.94	8.70	8.95	3.6%	4.2%	104%	$325
Pegasus Gold	0.41	-1.55	0.37	-0.24	**0.34**	0.60	1.62	1.22	1.47	1.60	**1.65**	2.00	6.33	8.82	8.48	8.72	-2.8%	4.0%	161%	$325
Santa Fe Pacific#	0.09	-0.69	0.54	0.80	**1.00**	1.40	NM	NM	0.15	0.25	**0.25**	0.30	5.27	5.71	6.41	7.31	13.2%	14.6%	178%	$300
Hemlo Gold	0.31	0.23	0.13	0.34	**0.34**	0.28	0.57	0.75	0.63	0.55	**0.55**	0.60	1.67	2.10	2.28	2.46	15.5%	14.3%	244%	$225
Amax Gold Inc	0.55	0.47	0.35	0.24	**0.07**	0.17	0.80	1.23	0.82	0.48	**0.55**	0.85	2.01	2.27	3.54	3.53	8.3%	2.0%	241%	$375
TVX Gold	-0.03	0.10	0.05	0.08	**0.06**	0.17	0.02	0.19	0.26	0.35	**0.33**	0.50	1.34	1.41	1.49	1.55	5.5%	3.9%	127%	$317
Teck Corp	1.15	0.95	0.39	0.45	**0.45**	1.20	1.50	1.79	1.31	1.00	**1.05**	1.75	7.98	8.47	8.75	9.03	5.2%	5.1%	147%	$275
Royal Oak Mines	NM	-0.90	0.21	0.16	**0.20**	0.30	NM	0.01	0.30	0.20	**0.28**	0.35	0.80	0.72	0.91	1.11	19.6%	19.8%	135%	$320
FirstMiss Gold	0.31	0.01	0.00	0.24	**0.30**	0.25	0.50	0.83	0.67	1.16	**1.25**	1.20	2.32	2.32	2.56	2.86	9.8%	11.1%	197%	$320
Nerco#	1.90	2.05	2.12	-5.50	**0.95**	1.00	0.80	0.82	0.54	0.00	**0.00**	0.25	15.22	17.34	11.84	12.79	-37.7%	7.7%	94%	$410
Hecla Mining#	-0.83	0.19	-0.51	-0.40	**-0.25**	0.20	0.17	1.04	0.40	0.50	**0.51**	0.70	4.94	4.95	4.72	4.47	-8.3%	-5.4%	168%	$390
Coeur d'Alene	-0.29	-0.30	-0.94	-0.25	**-0.45**	0.20	1.19	0.39	-0.05	0.11	**0.12**	1.25	13.83	12.01	11.61	11.01	-2.1%	-4.0%	95%	$400
Agnico Eagle	-0.57	-1.60	-2.49	0.24	**0.20**	0.25	0.09	0.20	0.26	0.60	**0.55**	0.60	4.17	1.41	1.57	1.70	16.1%	12.2%	250%	$290
FMC Gold Co@	0.75	0.56	0.10	0.23	**-0.04**	0.03	1.00	0.88	0.53	0.65	**0.40**	0.28	3.27	3.32	3.50	3.41	6.7%	-1.2%	128%	$355
Bema Gold	-0.09	-0.03	-0.09	-0.10	**-0.16**	0.30	0.02	0.09	-0.07	-0.05	**-0.11**	0.40	0.87	0.86	0.76	0.59	-12.4%	-24.1%	105%	NM
Glamis Gold	-0.26	0.27	0.25	0.08	**0.14**	0.25	0.10	0.40	0.61	0.72	**0.80**	1.00	1.56	1.59	1.62	1.71	5.0%	8.4%	238%	$300
Crown Resources*	-0.12	0.08	-0.09	-0.50	**-0.30**	0.90	-0.13	0.05	-0.22	-0.15	**-0.30**	1.10	1.66	1.66	1.16	0.86	-35.5%	-29.7%	785%	$500
Franco-Nevada	0.25	0.34	0.50	0.80	**1.05**	1.75	0.25	0.34	0.50	0.80	**1.05**	**1.75**	1.35	3.31	3.87	4.68	22.3%	24.6%	441%	$50
Dickenson Mines	0.44	-1.93	0.37	0.07	**0.05**	0.25	0.49	0.23	0.50	0.30	**0.30**	0.60	2.59	2.81	2.88	2.94	2.5%	1.9%	102%	$350
Rayrock	0.34	0.30	0.20	0.00	**-0.02**	0.30	1.31	1.50	1.40	1.10	**1.35**	1.50	3.31	3.39	3.39	3.37	0.0%	-0.6%	239%	$345
Atlas Corp.	-0.86	0.88	-1.25	-1.18	**-0.90**	0.25	1.17	1.63	0.88	0.73	**0.65**	1.00	6.17	5.14	3.96	5.81	-25.9%	-18.4%	84%	$380
Canyon Resources*	-0.33	-0.28	0.10	-0.54	**-0.10**	0.05	-0.05	0.01	0.31	0.28	**0.10**	0.20	1.34	1.44	0.93	0.83	-45.6%	-11.4%	211%	$400
Euro-Nevada	0.08	0.15	0.23	0.28	**0.35**	0.80	0.08	0.15	0.23	0.28	**0.35**	0.80	2.19	3.73	4.18	4.50	7.1%	8.1%	280%	$100
USMX INC.	0.18	0.21	0.14	0.01	**0.02**	0.20	0.40	0.38	0.29	0.20	**0.22**	0.45	1.25	1.46	1.47	1.69	0.7%	1.0%	156%	$330
Average Values Top 15 Gold Producers																	**7.5%**	**8.1%**	**285%**	**$308**
Average Values of Smaller Producers																	**-4.0%**	**0.3%**	**214%**	**$324**

Source : Donaldson Lufkin & Jenrette

Table 4

SUMMARY STOCK INFORMATION

Company	Price (US$) 1/4/93	FD Shares Outstd	Market Cap ($Mil)	All Debts less cash ($Mil)	Nongold Assets ($ Mil.)	Estimated 5-Year Cap. Exp.	Ticker Symbol	Divd	Current Yield (%)	52-week Range	Explor. Expense ($Mil)	1996E Thous. Gold	Output Oz. Silver	Est. Gold Reserves U.S. + Canada + Australia	Other Foreign	Reserve Life
Placer Dome Inc#	11.25	236.9	2665.1	-250.0	200.0	750.0	PDG	0.25	2.2	12-9	60.0	1800	14000	7356	5042	6.9
Newmont Mining#	40.50	74.5	3017.3	30.0	0.0	700.0	NEM	0.60	1.5	54-36	55.0	1720	0	19000	3000	12.8
Newmont Gold Co#	31.25	104.9	3278.1	-200.0	0.0	600.0	NGC	0.05	0.2	52-30	14.5	1700	0	20000	0	11.8
American Barrick#	30.38	145.9	4431.7	210.0	0.0	350.0	ABX	0.13	0.4	33-22	5.0	1668	0	27000	0	16.2
Homestake Mining#	10.63	136.5	1450.3	280.0	175.0	450.0	HM	0.20	1.9	17-10	15.0	1400	0	15256	0	10.9
Freeport-M Cu + Au	22.13	215.1	4759.1	-46.9	2500.0	800.0	FCX	0.60	2.7	24-16	10.0	1071	2011	0	29715	34.7
LAC Minerals #	5.00	147.1	735.5	32.0	50.0	275.0	LAC	0.11	2.2	8-5	14.0	900	1500	5785	2010	8.7
Echo Bay Mines#	4.75	122.3	580.9	108.9	0.0	600.0	ECO	0.07	1.5	8-4	5.6	730	13	11691	0	16.0
Battle Mountain#	5.00	84.7	423.5	175.0	0.0	300.0	BMG	0.05	1.0	9-6	12.0	555	140	1914	3316	9.4
Cambior	9.34	36.8	343.7	60.0	50.0	300.0	CBJ.TO	0.12	1.3	10-6	5.0	550	0	1200	1566	5.0
Pegasus Gold	14.00	31.4	438.9	20.0	0.0	250.0	PGU	0.10	0.7	19-11	7.3	475	2000	3460	0	7.3
Santa Fe Pacific#	13.00	180.9	2351.7	180.0	1989.9	125.0	SFX	0.10	0.8	14-11	17.0	475	0	5500	0	11.6
Hemlo Gold	6.00	96.8	580.5	-75.0	0.0	75.0	HEM	0.16	2.7	10-6	13.0	460	0	7030	0	15.3
Amax Gold Inc	8.50	74.4	632.1	97.7	0.0	450.0	AU	0.08	0.9	13-8	11.0	400	300	1900	1600	8.8
TVX Gold	1.97	136.6	268.9	165.5	0.0	60.0	TVXTF	0.00	0.0	4-2	3.0	300	8000	1530	4625	20.5
Teck Corp	13.27	81.7	1084.3	-350.0	600.0	400.0	TEKB.TO	0.17	1.3	19-13	13.0	350	0	4654	0	13.3
Royal Oak Mines	1.50	76.0	114.0	-5.0	0.0	25.0	RYO	0.00	0.0	2-1	0.5	340	0	2000	0	5.9
FirstMiss Gold	5.63	18.0	101.3	29.5	0.0	30.0	FRMG	0.00	0.0	6- 3	2.5	225	0	1258	0	5.6
Nerco#	12.00	39.2	470.4	745.0	400.0	200.0	NER	0.00	0.0	16-11	4.0	180	3500	1789	0	9.9
Hecla Mining#	7.50	34.7	260.3	70.0	47.5	130.0	HL	0.00	0.0	12-7	5.7	150	4000	1500	0	10.0
Coeur d'Alene	10.50	22.1	231.6	-125.0	30.0	150.0	CDE	0.15	1.4	18-11	2.3	110	7000	1675	300	18.0
Agnico Eagle	4.25	31.0	131.8	12.0	0.0	30.0	AEAGF	0.08	2.5	6- 3	4.0	175	200	1300	0	7.4
FMC Gold Co@	4.38	73.5	321.6	-155.0	0.0	75.0	FGL	0.05	1.1	6-4	11.5	175	0	1600	0	9.1
Bema Gold	0.62	39.0	24.2	0.0	0.0	70.0	BGO.TO	0.00	0.0	2-1	0.0	116	0	400	1095	12.9
Glamis Gold	4.06	21.0	85.3	0.0	0.0	22.0	GLGVF	0.05	1.2	4-3	0.3	115	0	900	0	7.8
Crown Resources*	6.75	13.7	92.5	-5.0	0.0	0.0	CRRS	0.00	0.0	9- 5	2.0	100	0	800	0	8.0
Franco-Nevada	20.65	14.8	305.6	-33.0	0.0	0.0	FN.TO	0.24	1.2	26-16	0.2	100	0	1800	0	18.0
Dickenson Mines	3.00	20.6	61.7	30.0	0.0	22.0	DMLA	0.00	0.0	4- 3	1.0	95	0	1175	0	12.4
Rayrock	8.06	16.3	131.4	20.0	75.0	90.0	RAY.TO	0.00	0.0	8-4	3.5	90	0	589	0	6.5
Atlas Corp.	4.88	6.3	30.9	0.0	0.0	40.0	AZ	0.00	0.0	7-4	2.5	80	0	410	0	5.1
Canyon Resources*	1.75	29.7	52.0	6.2	0.0	57.0	CYNR	0.00	0.0	3- 1	0.3	80	0	1625	0	20.3
Euro-Nevada	12.58	17.1	214.8	-35.0	0.0	0.0	EN.TO	0.03	0.2	16-11	0.2	75	0	1500	0	20.0
USMX INC.	2.63	15.0	39.4	-8.0	0.0	10.0	USMX	0.00	0.0	3- 1	2.0	60	0	750	0	12.5
Totals			**29710**	**239**	**6117**	**7436**			**0.9**		**302.9**	**16820**	**42664**	**154347**	**52269**	**9.2**

We define "all debts less cash" to exclude convertible securities already counted in "fully diluted shares outstg." to avoid double-counting them.
We define "reserves" to exclude minority interests, ownership stakes without access to cash flows, recovery losses or mines with cash costs of $300 in one of the two prior years.
We distingluish between "class one reserves" in the U.S., Canada and Australia and those in all other nations having greater political risks, in our opinion.

its in 1993, and some others may register meager earnings too slender to permit meaningful price/earnings calculations.

The valuations of the smaller producers tend to be different from those of the larger 15 firms. The smaller deposits do not enjoy economies of scale, and the smaller companies sometimes have higher fixed administrative or exploration overheads per ounce produced. Consequently, the smaller companies are less profitable per ounce produced on average. The stock market values the smaller firms at roughly $920 per ounce of estimated 1996 production and $90 per ounce of recoverable reserves as defined, which is a 30-40% discount to those of the top 15 firms (Table 2). The market values the smaller firms at roughly 22 times their typically more slender earnings and 7.6 times cash flow margins, although the analysis of price to cash flow or price/earnings ratios for the smaller firms does not appear meaningful owing to their current collective earnings status.

We have graphically presented eight important data series in bar charts (1-8) to simplify the visual presentation of our valuation database.

PROSPECTIVE VALUATIONS WHEN GOLD PRICES RECOVER

The potential profile of the major North American companies in 1996 will be different. Today's 33 major firms with a nearly $29 billion aggregate market value (Table 4) probably will have merged into 20-25 concerns to save $100-200 million in collective administrative and exploration expenses, which translates into a minimum savings of $6-12 per ounce over the 15 million ounces of gold that we expect these firms to produce worldwide.

We look for the average reserve life of the North American-based firms to shrink toward 8.5 years from the recent ten-year level (Table 4) and roughly 12-year level seen five years ago. Moreover, we expect the North American-based gold producers to increase the fraction of their reserves held in LDCs or nations other than the United States, Canada or Australia to rise from 24% at present toward 35%. The combination of production increases, reduced levels of exploration activity, redirection of exploration efforts abroad to avoid North American environmental complications and declassification of higher cost reserves all have served to delay reserve replacement and reduce reserve lives. Property write-offs will continue and mine idlings increase as long as gold prices decline.

During the 1980s we looked to the 24% annualized growth rate of North American gold output to justify premium valuations that typically were twice the level of the overall stock market. Sixfold production growth over the course of a decade and fertile exploration potential commanded investor interest.

Contemporary environmental trends, reduced exploration activity, reduced access to capital and the sustained period of low gold prices all threaten to reduce North American gold output between the years 2000 and 2005. Common stocks tend to become sensitive to reserve lives when they range from five to eight years, such as those now approached by ***Placer Dome, LAC Minerals, Pegasus Gold, Cambior, Royal Oak Mines, FirstMiss Gold*** or ***Agnico-Eagle***. Valuations become quite depressed after the most profitable zones fall within a four-year remaining life as the performance of ***Battle Mountain, FMC Gold*** or ***Amax Gold*** demonstrated in 1990-1992.

We look for the relative valuation of gold shares to suffer if current trends continue and reserve lives dwindle. We estimate that a gold price of $400 will be necessary in 1996 to justify the present

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$29 billion market capitalization of the 33 companies that we monitor. The valuation of reserves and production will be about the same as seen today, but the valuation of earnings and cash flow probably will be at a 30-40% discount to today's levels owing to the shortening of reserve lives. Higher gold prices are necessary to generate the increased earnings and cash flows needed to support current valuations.

Placer Dome and ***Newmont Mining*** are the only North American companies that have maintained very large scale gold exploration programs of roughly $50 million annually despite the recent gold price declines. ***Teck Corporation, Newmont Gold, Homestake Mining, Freeport-McMoRan Copper and Gold, LAC Minerals, Hemlo Gold, Santa Fe Gold*** and ***Amax Gold*** each maintain exploration efforts amounting to $12-17 million annually. The exploration programs of ***Battle Mountain, FMC Gold*** or perhaps a few others may be scaled back slightly from the lower end of that range. Expending money sometimes facilitates exploration success.

We believe that plenty of gold remains to be found both in North America and around the world. Man doesn't understand many of the ways that gold occurs in nature. The odds weigh against the delineation of large amounts of gold in 1993-1995, however, owing to contemporary environmental, exploration activity and economic trends and the lead times inherent in the exploration process. Clearly those firms that have laid off most of their geologists have lower odds of discoveries.

While global gold mining costs weigh against too much more erosion in the gold prices, time will run out for some of the undercapitalized firms in 1993 or 1994 unless gold prices rally robustly in the coming year. Investors should be attentive to the financial wherewithal of gold companies in choosing their investments in the coming year.

John C. Tumazos, CFA
(212) 504-4233

Note: Prices are as of the close, January 4, 1992.

Anglo-American Gold (AAGIY): 2⅞
Equinox Resources (EQX.To): C$1.87
Freeport-McMoRan Inc. (FTX)@: 17¼
Galactic Resources (GLC): 1/32
Granges (GXL.To)#: 17/16
Northgate Exploration (NGX)#: ½
RTZ (RTZ): 41½

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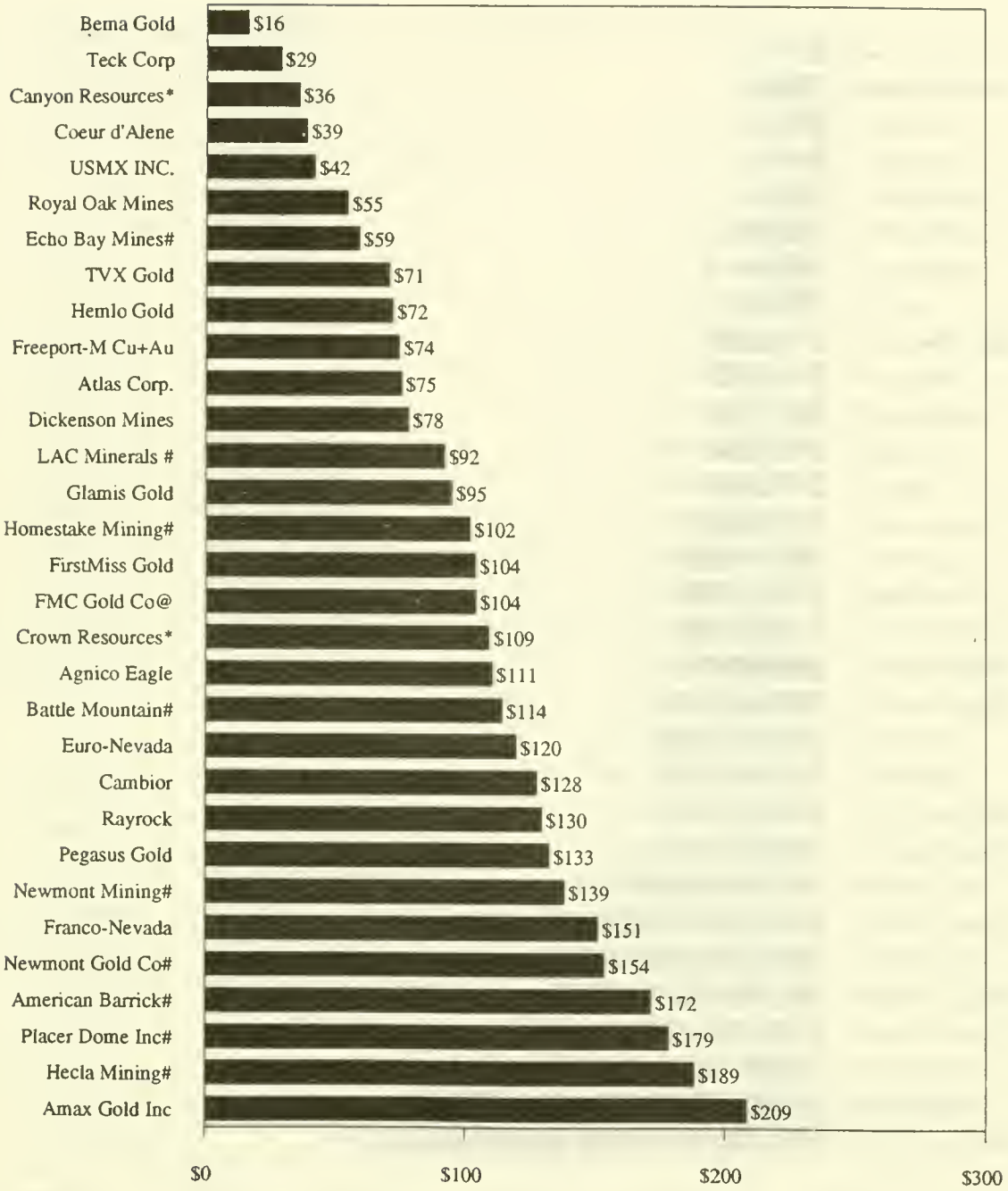
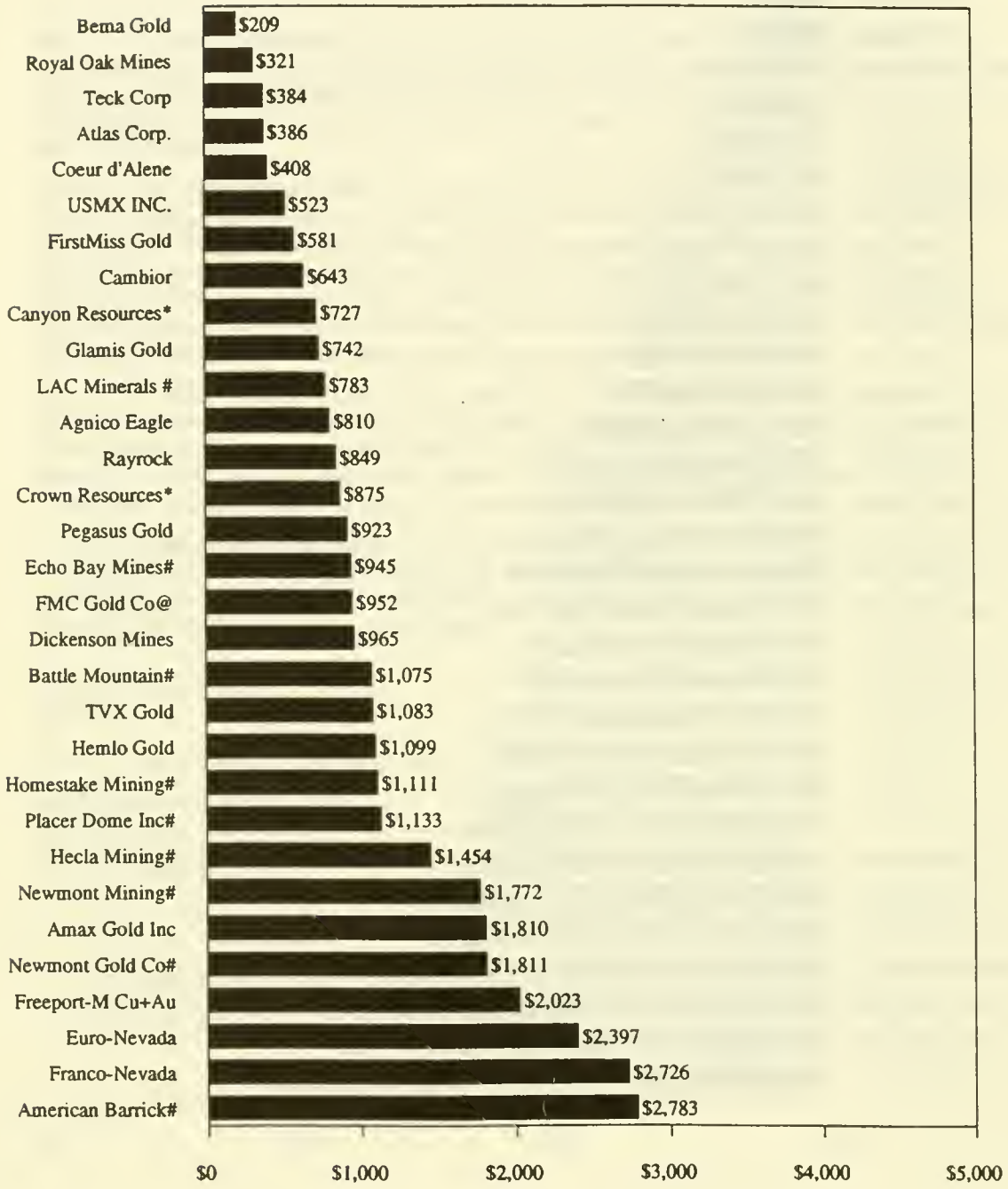
Chart 1
Capitalization per Ounce of Global Reserves



Sources: DLJ estimates; Company reports

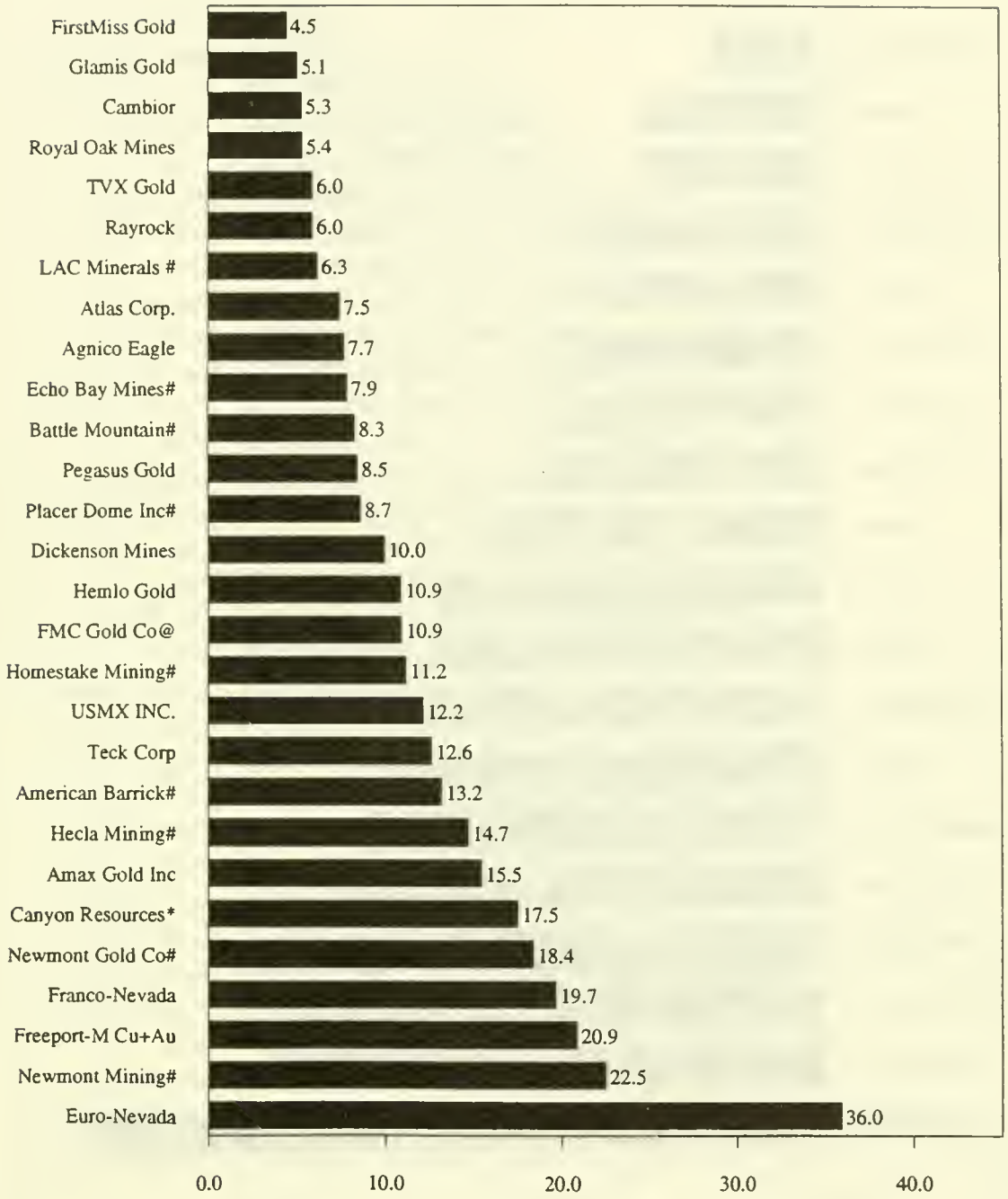
Chart 2 **Donaldson, Lufkin & Jenrette**

Total Capitalization per Ounce of 1996 Estimated Output



Sources: DLJ estimates; Company reports

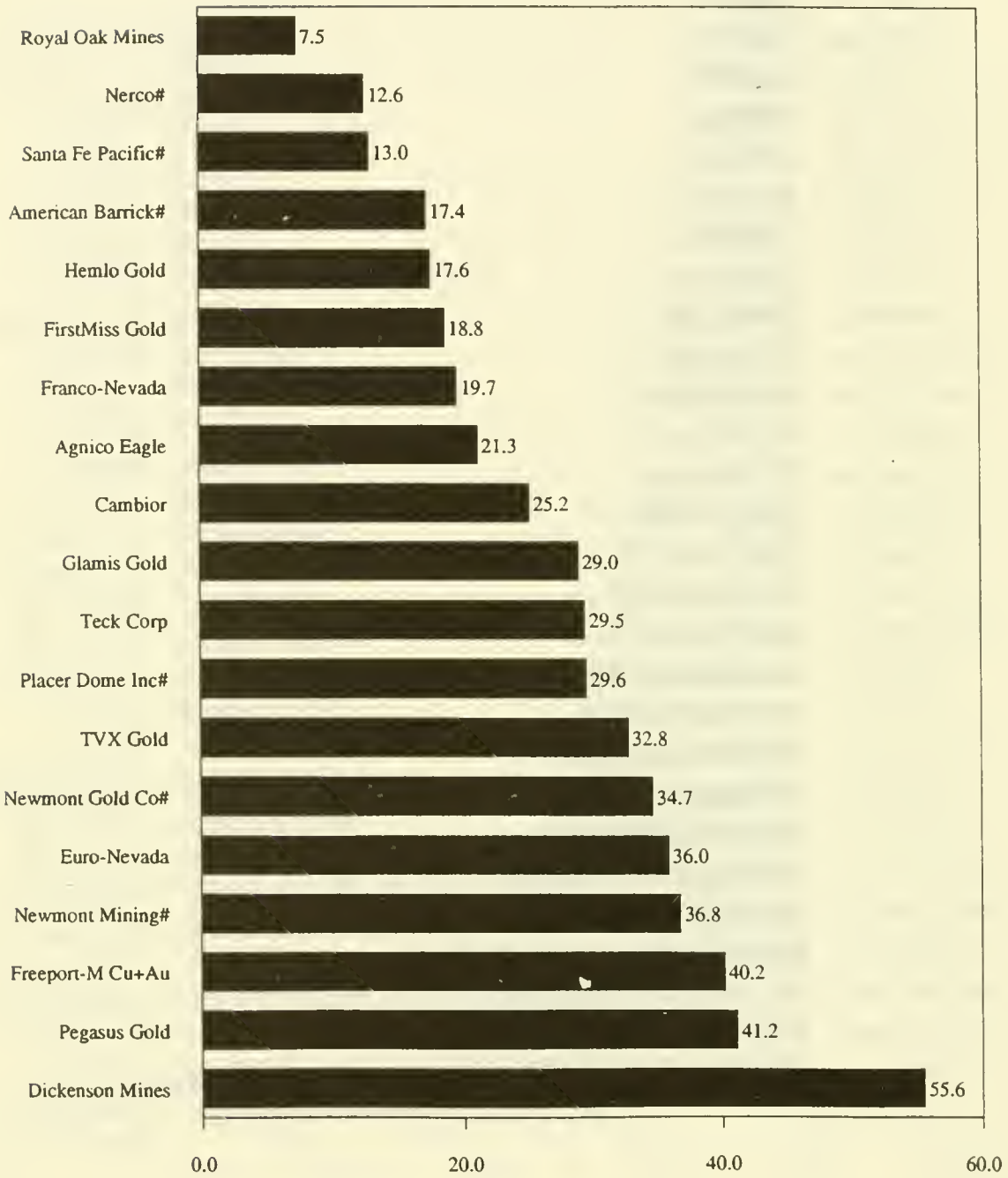
Chart 3
1993 Estimated Price to Cash Flow



Sources: DLJ estimates; Company reports

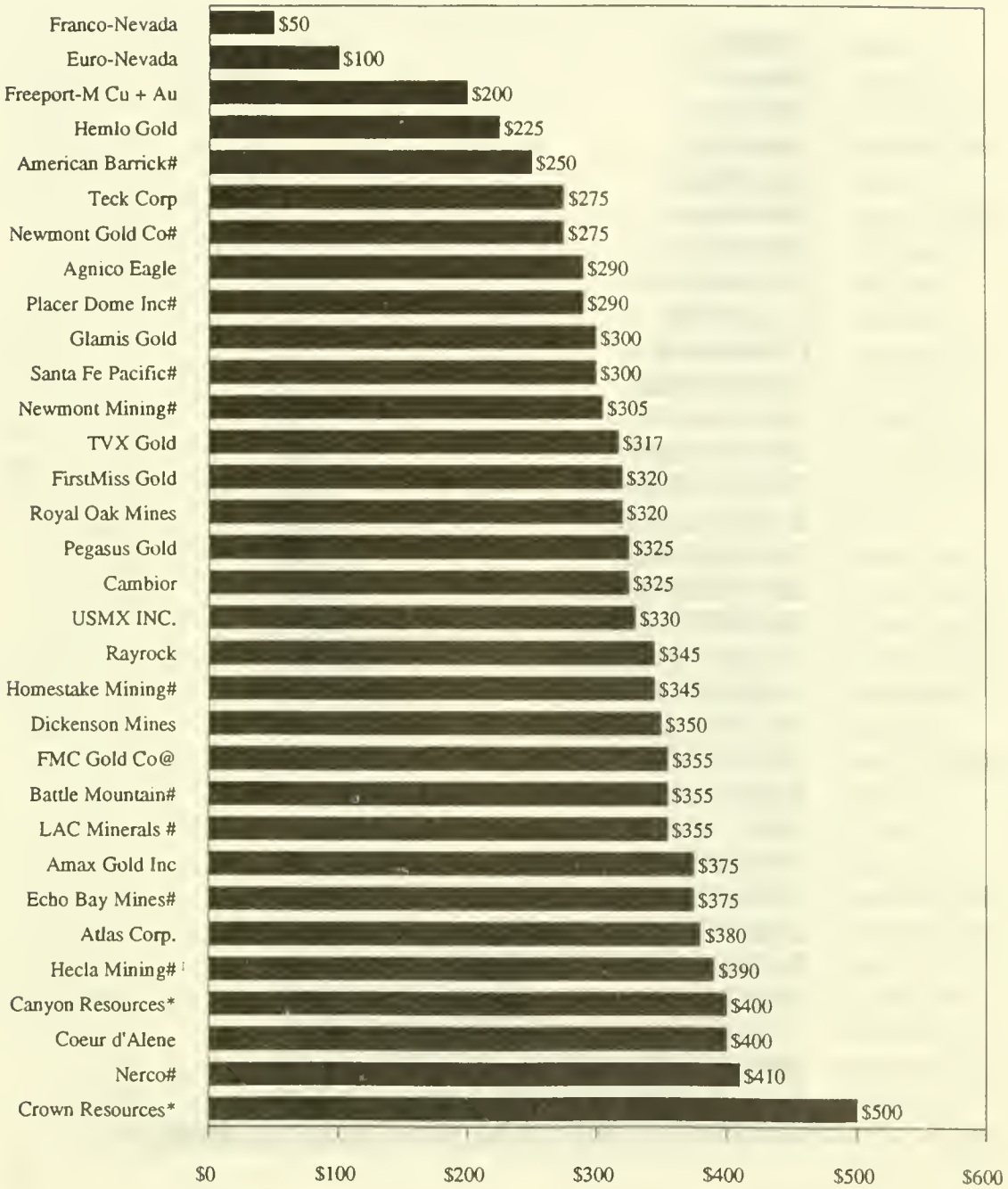
Chart 4 **Donaldson, Lufkin & Jenrette**

1993 Estimated Price to Earnings



Sources: DLJ estimates; Company reports

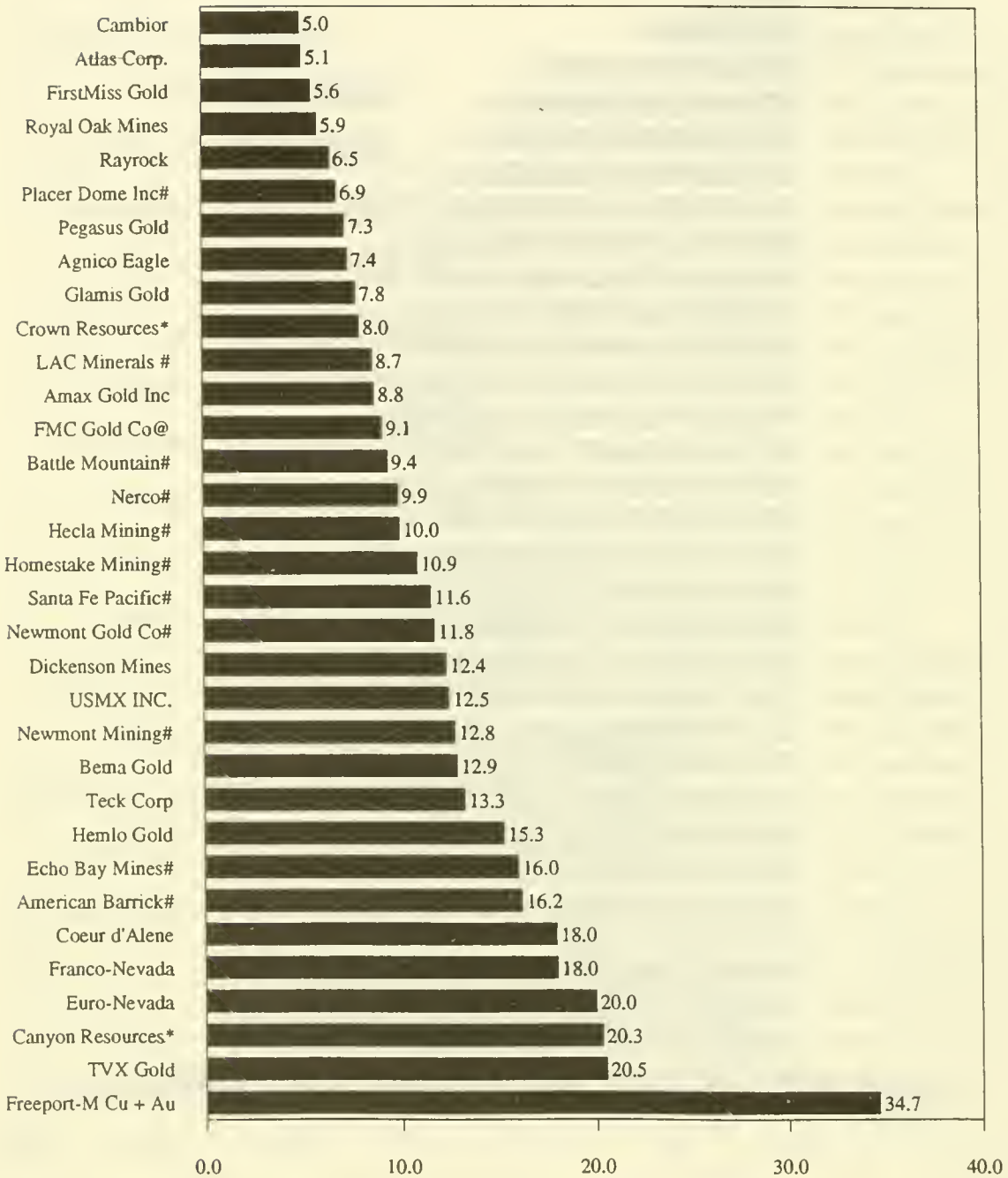
Chart 5
Pretax Breakeven Gold Price



Sources: DLJ estimates; Company reports

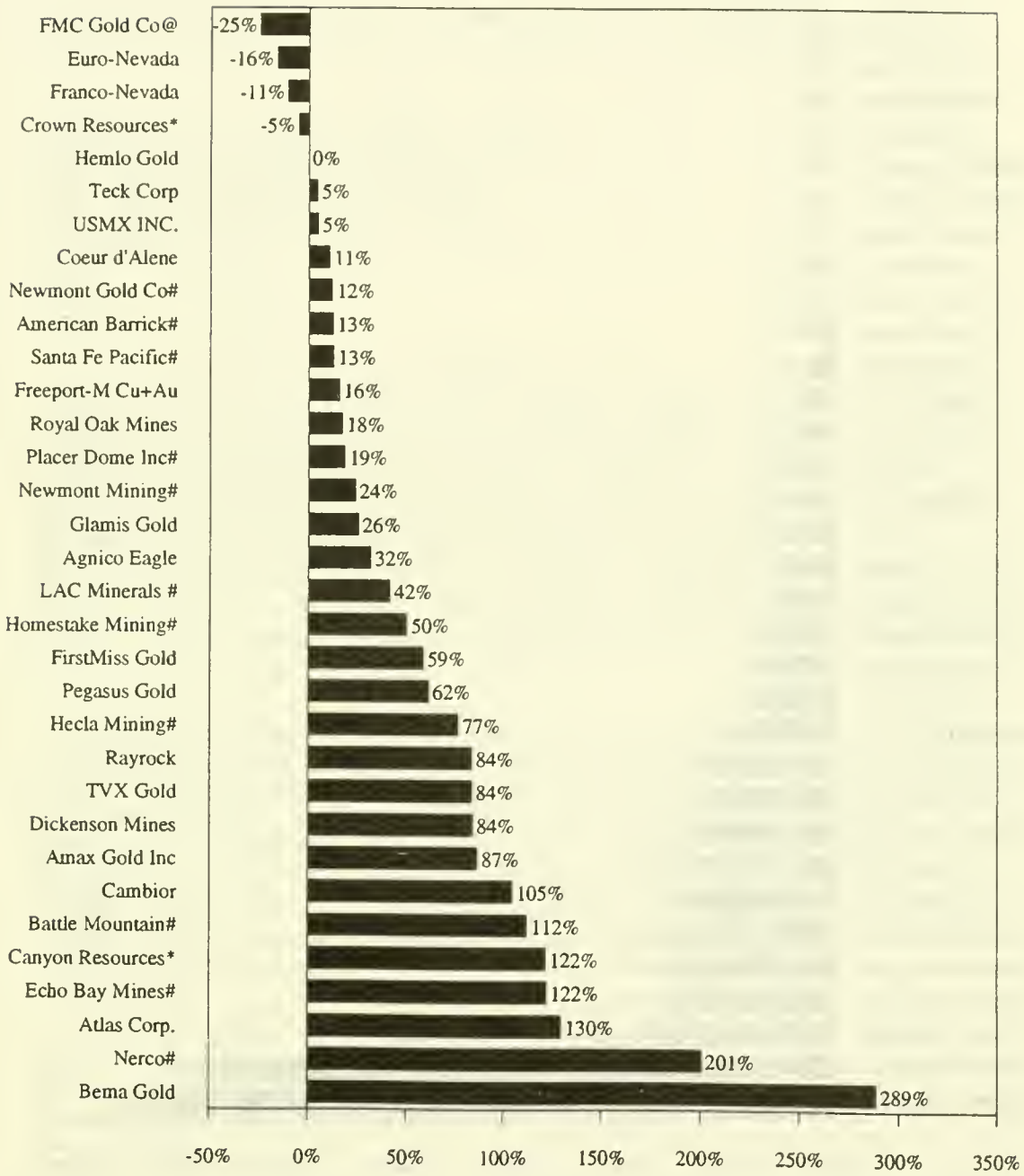
Donaldson, Lufkin & Jenrette

Chart 6
Estimated Reserve Life in Years



Sources: DLJ estimates; Company reports

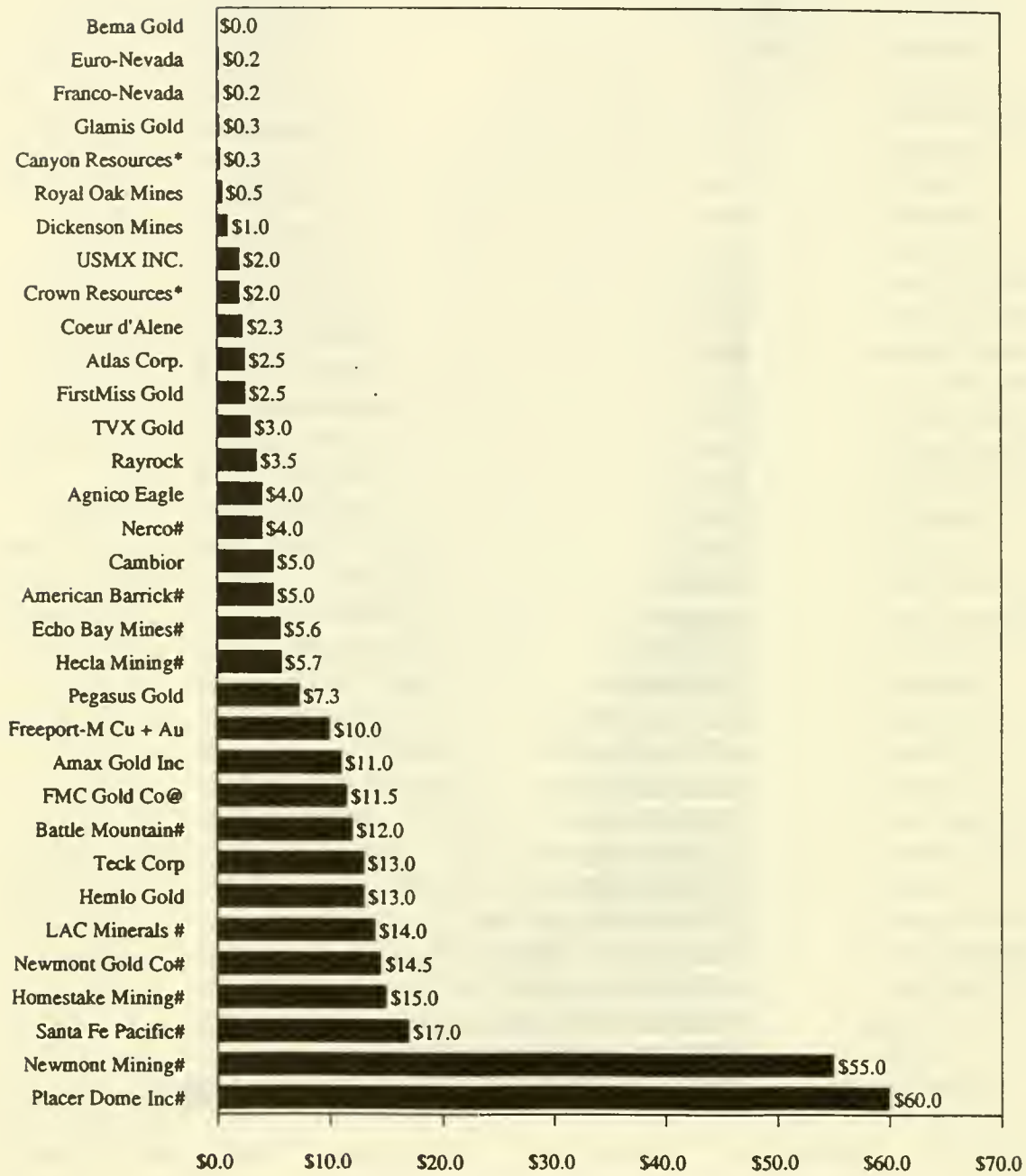
Chart 7
Net Debt and Estimated Capital Spending Budget as a Percentage of Market Capitalization



Sources: DLJ estimates; Company reports

Chart 8 **Donaldson, Lufkin & Jenrette**

Estimated Exploration Budgets
($ in millions)



Sources: DLJ estimates; Company reports

Van Eck
Global Investments Since 1955

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March 11, 1993

The Honorable George Miller, Chairman
Committee on Natural Resources
U.S. House of Representatives
Room 2205 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

As shown in the accompanying table, the U.S. gold-mining industry produced poor profits in 1992, when, we would point out, the gold price averaged $15-an-ounce higher than it is today. Aggregating the results and excluding hedging gains, we estimate the eight companies in our survey, among the largest and best-managed in the industry, eked out a paltry $24/oz. in net income (before extra-ordinaries), representing a 7% return on sales using the $345-an-ounce average price for 1992. At today's $330-an-ounce price, I believe it is safe to say the industry would earn little over $10-an-ounce. In fact, despite significant cost-cutting programs at all companies, production costs will rise somewhat for most of these companies and so the profit would likely be cut still further today.

Translating these profits into returns for shareholders paints an even more dismal picture - according to my estimate, these eight companies generated approximately 7% return on equity (R-O-E) in 1992, compared with an estimated R-O-E for the S&P 500 of 12%. Moreover, the gold-mining return is artificially high because of the very significant writedowns and write-offs incurred by the industry in recent years, which reduced shareholder equity significantly at some companies. Those write-offs reflect the very risky nature of the mining business, a riskiness that should require the prospect of above-average returns to compensate for the above-average level of risk inherent in the business.

Furthermore, the North American gold mining industry is selling at about 45 times 1992 earnings and about 13 times cash flow. Compare that with a price-to-earnings ratio of 24 times and a price-to-cash-flow ratio of 10 times for the S&P 500. Clearly, the fundamentals are not attractive to the general investor who can buy companies making cereal or widgets and earning far greater returns without the operating and price risk attendant with gold mining. The imposition of a royalty burden on these already-squeezed companies would clearly serve to make them even less attractive as investments.

Bear in mind also that mining is a truly global business -

investment dollars have always flowed where the geology was favorable and where the relative economics were attractive, more so today than ever before. When I became an analyst 10 years ago, the stocks of companies with mining operations outside North America sold at discounts to those of "all-American" companies like Homestake and Battle Mountain. Today, in the U.S. the difficulties and significant delays experienced by most companies trying to permit properties and the threat of a 12 1/2% royalty on revenues right off the top contrast sharply with the relaxation of fiscal burdens and foreign ownership restrictions in countries such as Mexico, Chile, Venezuela, et al. Most of the North American company managements to whom we speak would prefer to concentrate their exploration and development efforts at home, but are being driven to foreign shores by the relatively unfavorable economics here in the States. Just a few years ago, I would have viewed such geographical diversification negatively; today, as an investor, I applaud managements who are taking the steps necessary to enhance shareholder returns. Today, the shares of companies with properties abroad often sell at premiums to the group - not in spite of the foreign accent, but rather, in my opinion, because of it.

Let us take the investment choice a step further - to foreign companies. According to statistics from Deacon Barclays de Zoete Wedd, an international brokerage concern, the Australian gold-mining industry is selling at about 15 times earnings and less than 7 times cash flow, while the North American industry sells at nearly 45 times earnings and 13 times cash flow - that is, North American gold shares are three times as expensive as their Australian counterparts on an earnings basis and twice as expensive on a cash flow basis. Clearly, there is great incentive for investors to "buy Australian," where mining has a long history and where the legal and political framework is as developed as that of North America. A royalty burden on U.S. companies would only serve to make the Australians relatively even more attractive to us as investors.

Finally, South African gold shares, while presenting political and/or social risks that may be unacceptable to some, currently yield about 9% in annual dividends, versus yields of between 1% and 2% for North American gold shares, and sell at a price-to-earnings ratio of less than 14, similar to that of the Australians. On economics alone, the South Africans clearly offer superior value to that of U.S. companies.

Respectfully submitted,

Lucille Palermo

Lucille Palermo, C.F.A.
Associate Director - Mining Research
and Portfolio Manager

cc: The Members of the House Committee on Natural Resources

LUCILLE PALERMO, PORTFOLIO MANAGER
VAN ECK ASSOCIATES CORPORATION

SELECTED NORTH AMERICAN GOLD MINING COMPANIES
ACTUAL COSTS OF PRODUCTION IN 1992

	AMAX GOLD INC. 1992			AMER. BARRICK RESOURCES 1992			BATTLE MOUNTAIN GOLD CO. 1992			ECHO BAY MINES 1992		
	$ MMs	$/Oz.	% of Sales	$ MMs	$/Oz.	% of Sales	$ MMs	$/Oz.	% of Sales	$ MMs	$/Oz.	% of Sales
Ounces Sold	0.248			1.280			0.506			0.852		
Sales	$99.7	$402		$540.4	$422		$192.2	$380		$312.4	$367	
Royalties	0.0	0	0.0%	0.0	0	0.0%	10.4	21	5.4%	6.1	7	2.0%
Extraction Costs	52.8	213	53.0%	231.4	181	42.8%	117.3	232	61.1%	207.2	243	66.3%
	46.9	189	47.0%	309.0	241	57.2%	64.5	127	33.5%	99.1	116	31.7%
DD&A	21.8	88		69.1	54		38.6	76		83.7	98	
Gross Operating Profit	25.1	101	25.2%	239.9	187	44.4%	25.8	51	13.4%	15.4	18	4.9%
Other Operating Income	0.0	0		0.0	0		0.0	0		0.0	0	
	25.1	101		239.9	187		25.8	51		15.4	18	
SG&A	8.5	34		14.4	11		17.9	35		10.6	12	
	16.6	67	16.6%	225.5	176	41.7%	7.9	16	4.1%	4.8	6	1.5%
Exploration/Research	6.7	27		4.2	3		17.1	34		5.7	7	
Other Operating Expense	0.0	0		0.0	0		1.2	2		2.7	3	
Operating Earnings	9.9	40		221.3	173		-10.4	-21		-3.6	-4	
Interest Income	1.6	6		13.0	10		0.5	1		0.0	0	
EBIT	11.5	46	11.5%	234.3	183	43.4%	-10.0	-20	-5.2%	-3.6	-4	-1.2%
Interest Expense	2.4	10		9.4	7		0.0	0		5.5	6	
Pre-tax Earnings	9.1	37	9.1%	224.9	176	41.6%	-10.0	-20	-5.2%	-9.1	-11	-2.9%
Minority Interest		0			0		1.2	2		0.0	0	
	9.1	37		224.9	176		-11.2	-22		-9.1	-11	
Income & Other Taxes/ (Benefit)	5.0	20		50.0	39		-8.8	-17		0.2	0	
Income Before Extra-ordinaries	4.1	17	4.1%	174.9	137	32.4%	-2.3	-5	-1.2%	($9.3)	-11	-3.0%
Extraordinaries	7.4			0.0			-34.1			-18.1		
	11.5			174.9			-36.4			-27.4		
Equity Earnings	0.0			0.0			0.0			0.0		
Net Income	11.5			174.9			-36.4			-27.4		
Pref. Share Dividends	0.0			0.0			0.0			4.3		
Net Income Available To Common Shareholders	$11.5	46	11.5%	$174.9	137	32.4%	($36.4)	-72	-18.9%	($31.7)	-37	-10.1%

NOTE: Amax Gold made $57/oz. in 1992 on its hedging activities. Without these hedge gains, we estimate Amax would have LOST $40/oz. (before extra-ordinaries).

NOTE: Barrick made $77/oz. in 1992 on its hedging activities. Without these hedge gains, we estimate Barrick would have earned $60/oz., or only 17.3% on sales.

LUCILLE PALERMO, PORTFOLIO MANAGER
VAN ECK ASSOCIATES CORPORATION

SELECTED NORTH AMERICAN GOLD MINING COMPANIES
ACTUAL COSTS OF PRODUCTION IN 1992

	FMC GOLD 1992			HOMESTAKE MINING CO. 1992			NEWMONT GOLD COMPANY 1992			PEGASUS GOLD INC.		
	$ MMs	$/Oz.	% of Sales	$ MMs	$/Oz.	% of Sales	$ MMs	$/Oz.	% of Sales	$ MMs	$/Oz.	% of Sales
Ounces Sold	0.439			1.912			1.588			0.404		
Sales	$150.0	$341		$659.6	$345		$546.4	$344		$182.2	$451	
Royalties	0.0	0	0.0%	0.0	0	0.0%	0.0	0	0.0%	3.6	9	2.0%
Extraction Costs	120.0	273	80.0%	470.4	246	71.3%	314.6	198	57.6%	118.1	292	64.8%
	30.0	68	20.0%	189.3	99	28.7%	231.9	146	42.4%	60.5	150	33.2%
DD&A	0.0	0		117.5	61		96.7	61		27.8	69	
Gross Operating Profit	30	68	20.0%	71.8	38	10.9%	135.1	85	24.7%	32.8	81	18.0%
Other Operating Income	0.0	0		11.5	6		0.2	0		0.0	0	
	30	68	20.0%	83.3	44	12.6%	135.3	85	24.8%	32.8	81	18.0%
SG&A	7.7	18		48.5	25		13.3	8		9.2	23	
	22.3	51	14.9%	34.8	18	5.3%	122.0	77	22.3%	23.5	58	12.9%
Exploration/Research	12.2	28		27.8	15		14.7	9		9.1	23	
Other Operating Expense	0.0	0		5.7	3		3.9	2		1.6	4	
Operating Earnings	10.1	23	6.7%	1.3	1	0.2%	103.4	65	18.9%	12.9	32	7.1%
Interest Income	6.0	14		9.9	5		7.4	5		0.0	0	
EBIT	16.1	37	10.7%	11.2	6	1.7%	110.8	70	20.3%	12.9	32	7.1%
Interest Expense	0.0	0		13.4	7		0.0	0		0.0	0	
Pre-tax Earnings	16.1	37	10.7%	-2.2	-1	-0.3%	110.8	70	20.3%	12.9	32	7.1%
Minority Interest	0.0	0		0.2	0			0			0	
	16.1	37		-2.5	-1		110.8	70		12.9	32	
Income & Other Taxes/ (Benefit)	1.7	4		-2.9	-2		23.4	15		-3.4	-8	
Income Before Extra-ordinaries	14.4	33	9.6%	0.4	0	0.1%	87.4	55	16.0%	16.3	40	8.9%
Extraordinaries	0.0			-178.7			-6.4			-22.6		
	14.4			-178.3			81.1			-6.3		
Equity Earnings	0.0			2.5			0.0			0.0		
Net Income	14.4	33	9.6%	-175.8	-92	-26.7%	81.1	51	14.8%	-6.3	-16	-3.5%
Pref. Share Dividends	0.0			0.0			0.0			0.0		
Net Income Available To Common Shareholders	$14.4	33	9.6%	($175.8)	-92	-26.7%	$81.1	51	14.8%	($6.3)	-16	-3.5%

Donaldson, Lufkin & Jenrette
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John C. Tumazos
Vice President
Research Department
(212) 504-4233

December 10, 1992

Debbie Mino
Vice President of Public Relations
Crown Resources
2900 North Loop W. Suite1250
Houston TX 77092

Dear Debbie,

We have attached the initial RSVP list for our approaching January 12-13, 1992 program. Our past attendance has ranged from 43 institutional investors in 1989 to 65 for our two-day 1992 program. Our second invitation to clients will be mailed December 14, 1992.

Please reconfirm your attendance and names of speakers with Sharon Small at (212-504-4259). Potential securities offering or mergers may require minor agenda adjustments.

Our policy of publication of transcripts or slides that you provide places an administrative burden on our office. Please provide your remarks on hard copy, and if possible, provide a 3 1/2 inch disk on Microsoft Word for Windows or compatible format like Word Perfect or Multimate to help us out. Also, please indicate to Sharon Small (212-504-4259) whether or not you will have a transcript.

Failures to complete the attached ***organizational form*** may result in confusion in our effort to provide audio visual aids, etc.

As in the past six years, the theme of our program is "United Growth Through Exploration and Acquisition." Gold investing has attracted us in the past decade due to exploration potential upsides more than commodity price fluctuation.

In addition, we want all of the speakers to focus on some practical issues related to the present gold price environment. Pretax full cost breakeven points, your rates of return criteria, sensitivity of SEC reserve calculations to $300 gold prices, underground mine development footage over the past four years, the number of full-time exploration geologiests today versus five years ago, near term capital needs, and the willingness of the management to sell their companies are several topics we've asked the speakers to address in their remarks.

We prefer that you not discuss cash production costs in isolation, which is misleading to the audience. We will interrupt and ask for more explanation if speakers provide partial or incomplete cost data.

We're looking forward to an interesting program oriented to contemporary investment issues.

Faithfully yours,

John C. Tumazos

Mr. LEHMAN. Thank you very much.
Mr. Fiske.

STATEMENT OF TERRY N. FISKE

Mr. FISKE. Thank you, Mr. Chairman, Members of the committee. I appreciate being back again and appreciate your endurance in a session like today.

I am here today on behalf of the Precious Metal Producers, a group of five major producers of gold and silver in the United States. My own particular company is Echo Bay Mines, a member of that group, with offices in Reno and Denver, corporate and managements headquarters are in Denver with active mining operations and development operations in Alaska, the State of Washington, and exploration properties in several others, including California.

We have submitted a position paper or comments prepared by and on behalf of the Precious Metal Producers, which I will not read, on the assumption that they are available for your consideration. They focus on matters of particular concern by the PMP arising from Title II of H.R. 322, particularly the mine waste regulation provisions.

Very briefly, the position of the PMP is that we now have in place an ongoing and quite satisfactory statutory regulatory procedure under RCRA, and with the statutory and regulatory operations of the EPA, to provide for management of all wastes in the United States, hazardous, toxic, solid wastes, including mining wastes.

The technical and scientific strength of the United States, the United States Government, in dealing with waste is concentrated in that program, and it utilizes not only that strength but calls upon other organizations through its policy committee and utilization of programs to gather further information and material.

We view Title II as carving out or redirecting the attention from that program and putting it into the Department of Interior, perhaps the Forest Service, perhaps some planting, overlapping, and ongoing and proper programming. It would appear to us to create duplication, inconsistency, and inefficiency in this program.

If there should be perceived to be a need to augment the ongoing program for management of waste, then it should be as augmentation under RCRA and through the EPA rather than creating a new program to be administered by an agency which does not have the experience, the personnel, or the budgetary ability at this point to undertake that very demanding task.

Furthermore, we see Title II inflexible program for managing the mining activities that we are involved in now. It largely eliminates, certainly seriously erodes, the role of the States, who have various experiences. They can serve as laboratories for various programs. They have different circumstances, they need the flexibility, they can provide the flexibility. The program as we see it, as we would interpret it under H.R. 322, would deprive us of that.

Furthermore, with regard to the waste management aspects of Title II, our technical people tell us that the technical scientific standards and provisions of that are not sound and create some serious problems in themselves.

H.R. 322 is a very lengthy, complex, comprehensive bill, as it is intended to be. Whether it is in this form or in some amended form, it will result, ladies and gentlemen, in massive changes to a fundamental industry of the United States and the role of that industry in the public's life, for good or ill. As it is, as it is now drafted, and based upon the experience that we have in the mining industry, and as undoubtedly it will be interpreted and applied by agencies, courts, private citizen impact, we see it to be basically destructive of that fundamental industry, and perhaps even disastrous.

We do not in the time we have been allotted have the opportunity to go into the specifics or details that we may see concerning that, so I would like to just speak very briefly of concepts, although we certainly are prepared, as all of the other speakers have emphasized, to work in a cooperative and sincerely productive manner to try to formulate a program, formulate a mining revision which we indeed do favor, and find many of the aspects favorable, to work with the committee and others in order to develop a program that we think will not have these disastrous consequences, but can meet the legitimate concerns that have been raised about the Mining Law as it exists now.

Mining, ladies and gentlemen, is indispensable for life in the United States, if we are not to return to the Stone Age, which obviously we are not going to. It must cause some disruptions. They are unavoidable. There are some consequences that some people may prefer that we not have, such as changes in use of land.

Our knowledge is complete, as knowledge is completed by human beings in all fields of endeavor, and we get better as we go along, and even mishaps occur, but we must strive for a balance, and ladies and gentlemen, we would like to work together to achieve that balance.

What I meant, as I know many others in the industry do, what has come to be an adversarial, antagonistic approach to revision, reformation, improvement of Mining Law, particularly in environmental matters in the United States.

There have been those in our industry who have taken a position that they would resist to the death any change in the law. We think we have long passed that, and the intelligent views in the mining industry today soundly reject that idea.

But on the other hand, we find views which perhaps are not admitted, but nonetheless have the consequence of desiring to stop mining, to prevent it in the United States, or perhaps with a lack of knowledge or understanding of the scientific, technical and economic aspects of it, would have that effect, an actual prevention of mining in the United States. It could happen with bills such as H.R. 322, or approximating a happening of that.

Unfortunately, some of the aspects that I have mentioned are reflected in H.R. 322, and we would like the opportunity, again, to work to see if we cannot develop a program and a plan and a bill that would not have these undesirable effects.

The General Mining Law can be changed. It can be reformed. It can be improved. And it can be made a good, viable working program in a beneficial, nondestructive way, if we can work together.

Unfortunately, within the industry, the people who are knowledgeable about the economics as well as the technology of it, and in their private conversations, not just for public purposes, not just for political purposes, but in the private discussions among people in the industry, it is uniformly viewed as hostile to the mere existence of a mining industry.

That undoubtedly is not intended by its draftsmen, but that is how it is perceived after very detailed, careful study of it. It is viewed as antagonistic to an entire industry, an essential industry to the United States.

Mining deals with a public asset, and I am afraid that sometimes gets lost in these discussions. Those minerals in the ground, in the public domain, belong to the public. It is a national resource, an essential national resource.

It must be produced. They must be produced for the benefit of the public. And yet, so much of the bill seems to suggest that mining will be permitted only if some reason can't be found to prevent it. It appears to be a disfavored, inferior use. All others seem to be preferred, even to the exclusion of mining operations. That is done expressly in the provisions for unsuitability, the provisions, for even before there has been exploration, even before the geologists know what may be there, it is determined to be unsuitable for mining, which forecloses the opportunity to determine whether there is a deposit of valuable minerals belonging to the people of the United States even there.

Who will speak for the potential development of mining property if the minerals have not yet been discovered? There will be no miner, no mining company who will say, Wait a minute, we better keep it at least open. If we declare it unsuitable, we foreclose it from any further consideration. It is done not only expressly by the unsuitability provisions, but in the criteria section, 204(e), for unsuitable determinations.

One of them is determining that the land has no productive use. By definition, it appears mining is not considered to be a productive use. The other provisions, the other uses of the land, are productive, but mining is not.

We would be looking at extraordinarily expensive, time-consuming producers which we, in serious good faith, do not believe really enhance the environmental reclamation concerns. Many of them are unrealistic, scientifically unnecessary burdens.

The major concerns we have are the uncertainties of outcome in the development of interest and title, the security of title. We are concerned about illusory rights. As has been stated in one of the papers, the bill does not provide now for a right to mine. Even with discovery or even with location of a claim, it would provide for the right to apply to the government for discretionary permission.

These are concerns. As has been mentioned to this panel, the banks won't lend money on those. We must have assurance that once the initial work has been done, the money has been sent, we can proceed forward with safety. It is the cumulative effect of these matters, ladies and gentlemen. Any one on any project may not be deadly, but the accumulation of them begin to tip the balance so it is no longer viable economically.

As Dr. DeVoto has pointed out, as the other members of the panel have pointed out, there comes a point when economically the project just cannot bear those burdens.

In conclusion, I have got a list of about 10 or 11 or 12 items that we would like to have the opportunity to talk about specifically, but I know in the interests of time that that is not going to be permissible or possible.

The message that I would like to leave is that we are absolutely committed, the responsible members of the mining industry, to a sound environmental, reclamation-oriented industry for this country. We are absolutely convinced that it can be achieved. There will be disturbances that must be accepted and acknowledged, but fundamental environmental reclamation matters can be obtained and lived with, and we take a back seat to nobody in our enthusiasm for that.

What we are concerned about in large measure in H.R. 322 is what appears to be administrative, economic, time-consuming uncertain burdens that do not actually enhance those objectives, but nevertheless burden projects which may very well make them uneconomic and prevent the extraction of the minerals for the benefit of the United States and the people of the United States who own those minerals.

Thank you, Mr. Chairman.

[Prepared statements of Mr. Fiske and the Precious Metal Producers follow:]

TESTIMONY OF

Terry N. Fiske
Vice President and General Counsel
Echo Bay Mines

ON BEHALF OF THE
PRECIOUS METALS PRODUCERS

Hearing Before the House
Energy and Mineral Resources Subcommittee
Natural Resources Committee
on
H.R. 322, the Mineral Exploration and Development Act of 1993

March 11, 1993

On behalf of the Precious Metals Producers ("PMP"), I appreciate the opportunity to testify on Title II of H.R. 322, the Mineral Exploration and Development Act of 1993. I have provided the Subcommittee with a copy of my remarks, and will submit more detailed written testimony for the record within the time allotted.

The Precious Metals Producers is a group of five major gold and silver mining companies. The members -- American Barrick Resources Corporation, Battle Mountain Gold Company, Echo Bay Mines, FMC Gold Company and Independence Mining Company -- organized in 1986 to participate in the anticipated development by EPA of regulations under the Resource Conservation and Recovery Act ("RCRA") governing mining wastes. PMP continues to be active in that effort. We participate as a member in EPA's policy dialogue committee, formed to reach consensus on mine waste. We also took part in negotiations during the last

Congress, sponsored by Chairman Swift of the Transportation and Hazardous Materials Subcommittee, to reach agreement on RCRA legislation governing mining wastes. State and environmental group representatives also participated in both these policy discussions, and consensus was reached by the parties involved on some issues.

My testimony today will focus only on Title II of H.R. 322, which would add reclamation standards and environmental requirements to the Mining Law. In my testimony I will address briefly the status of efforts to develop mine waste requirements under RCRA and then will comment on major provisions of Title II of H.R. 322.

Mine Waste Regulation Under RCRA

Congress exempted mining wastes from regulation as "hazardous wastes" in 1980 and directed EPA to study the wastes and determine the best regulatory treatment for them. In 1986 EPA concluded that regulation under Subtitle C of RCRA -- the hazardous waste title -- was not warranted, and resolved instead to develop a program under Subtitle D, governing nonhazardous solid wastes. EPA gave several reasons for its decision:

First, Mining wastes are generated in extremely large volumes, and typically are low in toxicity compared to other wastes managed under Subtitle C. Therefore, managing them

under the strict requirements of Subtitle C would be unnecessary and economically impracticable;

Second, Subtitle C's stringent requirements are too inflexible to resolve the uniquely site-specific issues raised by mine waste management; and

Third, States already have significant expertise in developing and imposing mine waste requirements, and imposing Subtitle C requirements would not leave room for states to take responsible charge with existing and developing programs.

Since it made this determination, EPA has been busy developing a mine waste program under Subtitle D of RCRA. EPA drafted two "conceptual" regulatory approaches and solicited informal comments on them. These were called the "Strawman" documents. More recently EPA has undertaken a great deal of data-gathering on mine waste issues, and has sponsored the mine waste policy dialogue committee, which I already mentioned.

PMP supports the development of mine waste rules under Subtitle D of RCRA. We believe that a federal mine waste program is needed under RCRA to provide minimum requirements for state programs, and to make sure states meet the minimum requirements necessary to protect public health and the environment.

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Provisions of H.R. 322, Title II

The professed purpose of Title II is to add surface management and reclamation standards to the Mining Law. In fact, if Title II were enacted as written now it would have many more consequences than that, likely including the transfer of responsibility for mine waste management from EPA to the Department of Interior. Although PMP believes the mining industry should be responsible both for good surface management and reclamation, we oppose Title II of the Bill, on the following grounds:

1. EPA, Not Interior, Should Develop Mine Waste Requirements.

Title II as written would cover waste management during mine operations and would render superfluous the considerable amount of work that EPA, States and others have done to develop mine waste requirements under RCRA. EPA has been charged by Congress with extensive responsibility for development of waste management policy, and has developed technical expertise in the area of mine waste management. EPA is a long way down the road toward developing mine waste requirements. Interior, in contrast, has limited experience or technical expertise with the regulatory aspects of waste management. Shifting this responsibility to Interior now would represent a major change in federal environmental policy, and in my opinion an ill-considered one.

2. Title II Would Leave States Out of Mining Regulation.

The way I read it, Title II is a rejection of the idea that states have anything important to say about mining or its regulation. Section 203 would preempt many current and effective state programs, including solid waste management programs, if they are deemed not to "meet or exceed" requirements promulgated by Interior under Title II. Preempting workable state programs is poor federal policy and should not be adopted. Underlying our mine waste discussions in the policy dialogue committee have been two important ideas:

First, States have and should have a lot to say about requirements developed for mining. Many states have developed comprehensive programs, which vary widely in approach but which have basic scientific and environmental goals in common.

Second, States have had much more "on-the-ground" experience with hard-rock mining regulation than has EPA, Interior or anyone else, and accordingly can operate as laboratories for the development of federal policy and requirements.

Section 203 rejects these ideas. Far from giving states a significant voice in the process, Title II would impose requirements on them from the top down, and these requirements would be developed by Interior, an agency with limited prior

experience in the area. Even the Surface Mining, Reclamation and Control Act (SMCRA), upon which certain provisions of this Title are modeled, allows states to administer coal mining programs; Title II in contrast would not allow its programs to be delegated to States. There is not even a requirement for the Secretary to consult with EPA, or with states.

3. Title II Would Impose Duplicative Requirements on the Mining Industry.

Federal and state laws already impose numerous environmental protection requirements on mining operations. Prominent among those are the requirements of the Clean Water Act and the Clean Air Act. I will not take the time here to go into detail, but I am submitting for the record today a summary of the federal and state requirements that already apply to gold and silver mining operations in 14 states with active mining operations. Title II takes no account of the existence of these requirements, and would duplicate many of them to the extent it does not preempt them.

For instance, Section 201(n)((4)(B) would require miners to "prevent any contamination of surface or ground water" with acid or toxic drainage. This requirement would duplicate and might be in substantial conflict with the Clean Water Act, and with state ground water protection programs, under which effluent limits and control requirements already have been established.

I urge the Subcommittee to reconsider this approach. Environmental protection is both important and expensive, and has a very real impact on the bottom line for companies like mine. It does not make sense to impose conflicting and duplicative requirements, among other reasons, because it reduces the ability of responsible companies to pay for new environmental requirements that are deemed to be necessary in the future.

4. The Mining Permit Requirement and Reclamation Standards Are Not Workable.

Many of the requirements of Title II would make it difficult or impossible to find and develop ore bodies in the future. Because of time constraints, I address only a few problems here, and ask you to consider my written testimony, which will address the problems in detail.

Section 201(b) of the Bill would require a full-blown plan of operations, including at least a year of baseline monitoring, for all but the most inconsequential exploration activities. The requirement would wreak havoc on exploration efforts, and is not necessary to protect the environment. Substantial exploration should be subject to more streamlined requirements, as it is currently, that are tailored to address the temporary and limited nature of its impacts.

Another example of unworkability is Section 201(m)(1)(C), which concerns reclamation standards for soils. The section would require a miner to prevent any contamination or

toxification of soils. The word "toxification" is not defined and does not exist elsewhere in federal environmental law. Assuming that it refers to phenomena such as acid generation, the standard is simply impossible to meet as a practical matter. No miner could prevent all generation of acidic drainage from a mine site 1,000's of acres in size.

The standard is so broad that presumably it would prohibit the entry of any mining waste liquid into soils underneath a tailings impoundment or a waste rock disposal site. It simply would be impossible to **prevent** all such impacts on soils during operations,

More importantly, it is not necessary to impose these onerous and impossibly costly standards on the mining industry. Miners cannot always stop the generation of acids during operations but can take measures to insure that discharges of acid water meet federal and state surface and ground water quality standards. Similarly, soil impacts can be addressed to protect ground water and to sustain post-mining land uses.

5. Title II's Requirements Would Seriously and Unnecessarily Frustrate the Ability to Start Any New Mining Operation.

Finally, PMP opposes the provisions governing unsuitability determinations under Section 204. Because the review called for under the statute has to be conducted before any plan of operations can be approved, all exploration and mining would stop while the review is ongoing. Further, the criteria used for

determining unsuitability are extremely broad. For instance, Interior apparently would be required to designate lands as unsuitable if mineral activities would adversely affect a candidate species for threatened or endangered status, regardless of whether the species is ultimately listed. Compounding that concern, there is no provision that would allow miners or other citizens to petition the Secretary to reverse or modify such a determination.

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In summary Mr. Chairman, we believe Title II deserves fundamental reconsideration. Congress should consider carefully how mining regulations can best be designed and implemented and by which agency, what the appropriate role of states is, and what kinds of requirements are necessary to address the environmental risks posed by mining.

WRITTEN TESTIMONY OF

THE
PRECIOUS METALS PRODUCERS

Hearing Before the House
Energy and Mineral Resources Subcommittee
Natural Resources Committee
on
H.R. 322, the Mineral Exploration and Development Act of 1993

March 11, 1993

We appreciate the opportunity to submit testimony to the Subcommittee on Title II of H.R. 322, the Mineral Exploration and Development Act of 1993.

The Precious Metals Producers

The Precious Metals Producers are a group of five major mining companies which produce gold and silver throughout the western United States. The members of the PMP -- American Barrick Resources Corporation, Battle Mountain Gold Company, Echo Bay Mines, FMC Gold Company and Independence Mining Company -- organized in 1986 to participate in the anticipated development by EPA of regulations under the Resource Conservation and Recovery Act ("RCRA") governing mining wastes.

PMP supports EPA's development of well-conceived mining waste regulations under Subtitle D. PMP believes that a federal mine waste program under RCRA is necessary to provide minimum requirements for state programs, and to ensure that states meet the minimum requirements necessary to protect public health and the environment.

PMP participates in the Policy Dialogue Committee -- a committee organized by EPA to seek consensus where possible on mine waste issues -- and took part as well in negotiations during the last Congress, sponsored by Chairman Swift of the Transportation and Hazardous Materials Subcommittee, to reach agreement on RCRA legislation governing mining wastes. State and environmental group representatives also have participated in both these policy discussions, and consensus was reached by the parties involved on several important issues.

Mine Waste Regulation Under RCRA

In 1976, Congress temporarily exempted mining wastes from regulation as "hazardous wastes" and directed EPA to study the wastes and determine the best regulatory treatment for them. After extensively studying mining wastes, EPA concluded that regulation under Subtitle C of RCRA -- the hazardous waste title -- was not warranted, and resolved instead to develop a program under Subtitle D, governing nonhazardous solid wastes. 51 Fed. Reg. 24496 (July 3, 1986). EPA gave several reasons for its decision:

> First, Mining wastes are generated in extremely large volumes, and typically are low in toxicity compared to other wastes managed under Subtitle C. Therefore, managing them under the strict requirements of Subtitle C would be unnecessary and economically impracticable;

Second, Subtitle C's stringent requirements are too inflexible to resolve the uniquely site-specific issues raised by mine waste management; and

Third, States already have significant expertise in developing and imposing mine waste requirements, and imposing Subtitle C requirements would not leave room for states to take responsible charge with existing and developing programs.

After determining that mining wastes were unsuitable for regulation under Subtitle C, EPA initiated the development of a mining waste program under Subtitle D of RCRA. In connection with this effort, EPA drafted two "conceptual" regulatory approaches for mining wastes and solicited informal comments on them. These were the so called "Strawman" documents. The Strawman documents represented an enormous effort by government, environmental groups, states and industry to develop workable mining regulations under Subtitle D of RCRA by using a non-traditional process. More recently, EPA has undertaken a great deal of data-gathering on mine waste issues, and has sponsored the aforementioned mine waste policy dialogue committee.

PMP's Concerns with Respect to Title II to H.R. 322

Although PMP believes the mining industry should be responsible both for good surface management and reclamation, we believe that Title II's requirements are duplicative, excessive and unnecessary. The professed purpose of Title II is to add surface management and reclamation standards to the Mining Law.

In fact, as it is currently drafted, Title II would impose many new environmental requirements that would overlap or conflict with existing federal and state regulations. Moreover, we think Title II would effect a transfer of responsibility for mine waste management from EPA to the Department of Interior. The following discussion provides an overview of the reasons underlying PMP's opposition to Title II of H.R. 322. We are anxious not just to oppose but to make constructive suggestions to improve the Bill. We would be happy to work with the Committee, to offer technical assistance, and otherwise to work to come up with appropriate legislation.

1. **EPA, Not Interior, Should Develop Mine Waste Requirements.**

The EPA, States and others have invested considerable effort in developing mine waste requirements under RCRA. Indeed, since the enactment of RCRA, EPA has developed substantial technical expertise in the area of mine waste management, and has experience regulating the environmental impacts of other kinds of wastes. Interior, by contrast, has limited experience -- either technical or otherwise -- with the regulatory aspects of hard rock mine waste management.

2. **Title II Would Leave the States Out of Mining Regulation.**

As it is currently drafted, Title II is a rejection of the idea that states have anything important to say about mining or its regulation. Section 203 provides that state reclamation, bonding and inspection requirements that "meet or exceed" Interior's surface management requirements would not be preempted

by the Bill. By implication, section 203 would preempt many current and effective state programs which do not to "meet or exceed" the requirements promulgated by Interior under Title II.

Additionally, section 203 provides that the Bill would not affect the applicability of any state water quality or air quality requirements. By limiting its "preemption protection" to state water or air quality requirements, this language suggests that other state environmental requirements, such as solid waste and water quality requirements, would be preempted.[1]

Significantly, the Bill's preemption of inconsistent state laws would apply not only on federal lands, but on adjacent non-federal lands as well. The Bill requires the Secretary and the states to enter into cooperative agreements when proposed mineral activities would affect both federal and adjacent private lands. The cocperative agreement would set forth a common regulatory framework consistent with the requirements of Title II. In this

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[1] The provision of the Bill relating to water rights may be another example of Title II's preemption of state law. Section 203 would preserve the rights of all parties to "enforce or protect, under applicable law" their interests in water resources affected by mineral activities authorized under the Bill. The effect on state water laws is unclear, but the provision suggests by implication that Title II otherwise would preempt state water laws. The Bill should be clear about such a fundamental impact on state laws. PMP is opposed to the preemption of state water laws, especially without a careful consideration of the impacts of such and the disruption and confusion that would result from the displacement of these laws.

PMP encourages the Committee to look carefully at whether state water laws, in concert with other existing state and federal laws, can adequately address concerns about water quality and hydrologic imbalance. The state laws of Nevada would provide a useful illustration of how state and federal water laws combine to address problems of water quality and hydrologic balance.

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manner, the Bill's requirements -- including Title II's preemption of inconsistent state mining regulations -- would apply to both federal and private lands.

Preempting workable and effective state programs is poor federal policy and should not be adopted. Underlying EPA's approach to mine waste policy have been two important ideas:

First, States should be integrally involved in the development of mining waste requirements. Many states have developed comprehensive programs, which have received the support of government, industry and environmental groups. Although these state programs vary in approach, they share the same basic scientific and environmental goals.

Second, States have had much more "on-the-ground" experience with hard-rock mining regulation than has EPA, Interior or anyone else, and accordingly can operate as laboratories for the development of federal policy and requirements.

Section 203 rejects this common-sense notion of federalism. Rather than viewing the states as a useful partner in the development of mining regulations, the Bill would impose requirements on the states from the top down. The wisdom of such an approach is particularly questionable in light of the states' substantial experience in the development of mine waste requirements. Even the Surface Mining, Reclamation and Control Act (SMCRA), upon which certain provisions of this Title are

modeled, allows states to administer coal mining programs; Title II in contrast would not allow its programs to be delegated to States. At a minimum, the Secretary should be allowed to consult with EPA and the states in developing and implementing the Bill's surface management requirements.

This is not to say that Interior should not have a federally operated surface management program to protect federal lands and resources. It should. PMP believes however that it is an overreaction to shift all responsibility for regulation of mining to the federal government and away from states, and PMP believes this Bill would have that result. In all but a few cases, like perhaps California, states will not care to maintain programs that are required by law to be just like the non-delegable federal program. We urge the Committee to rethink fundamentally the wisdom of moving responsibility for making site-specific and resource-specific regulatory decisions from states, who have been regulating a long time, to a new federal bureaucracy with less experience in the area. The need to re-examine this fundamental shift in authority is heightened by the severe manpower constraints which such a shift would impose upon Interior.

3. **Title II Would Impose Duplicative Requirements on the Mining Industry.**

Federal and state laws already impose numerous environmental requirements on mining operations. Prominent among those are the requirements of the Clean Water Act and the Clean Air Act. Title II takes little account of the existence of these other

requirements, and would duplicate many of them to the extent it does not preempt them altogether.

For instance, Section 201(n)(4)(B) would require miners to "prevent any contamination of surface or ground water" with acid or toxic drainage. This requirement would duplicate and might be in substantial conflict with the Clean Water Act, and with state ground water protection programs, under which effluent limits, control requirements and ground water protection standards already have been established. In addition, Section 201(n)(3) requires operators to design basins, ditches, streambank stabilizers and diversions to control erosion and drainage from the area of mineral activities. However, a number of these requirements have already been addressed in EPA's storm water rules promulgated under the authority of Section 402 of the Clean Water Act.

The Subcommittee should reconsider this approach. We urge a look beyond the rhetoric on this issue, and an evaluation of the existing web of environmental requirements before imposing new ones. PMP believes strongly that new legislation or regulations covering areas of environmental protection that are the subject of existing federal and state requirements should be enacted only after compelling evidence demonstrates its necessity. The imposition of conflicting and duplicative requirements does not make sense because it would reduce the ability of responsible companies to pay for new environmental requirements that are deemed to be necessary in the future.

4. **The Mining Permit Requirement and Reclamation Standards Are Not Workable.**

Many of the requirements of Title II are unworkable and some are technically impossible. Taken together, they would make it difficult or impossible to find and develop ore bodies in the future.

Prior to the commencement of any mineral activity which may cause a disturbance of surface resources, the miner must submit a plan of operations to the Secretary for approval. The plan of operations must contain a reclamation plan and a mining permit application. Although a plan of operations would not be required for exploration activities that cause a negligible disturbance, the exemption would apply only if the exploration activities:

1. use no mechanized earth moving equipment, suction dredging or explosives;
2. use no motorized vehicles in areas closed to off-road vehicles;
3. do not require the construction of roads or drill pads; and
4. do not employ "toxic and hazardous materials".

Alternatively, exploration activities would not be covered if they involve only a minimum and readily reclaimable disturbance caused by initial test drilling. This exemption would specifically forbid the construction of roads and would require the operator to give notice and obtain financial assurance.

As a practical matter, exploration activities would rarely, if ever, qualify for either of these exemptions. Thus, the Bill would require a full-blown plan of operations, including at least

a year of baseline monitoring, for all but the most inconsequential exploration activities. This requirement would wreak havoc on exploration efforts and it is not necessary to protect the environment. Substantial exploration should be subject to more streamlined requirements, as it is currently, that are tailored to address the temporary and limited nature of its impacts.

A. Mining Permit Application.

Far from providing a streamlined process, the mining permit application would require the applicant to submit a voluminous amount of information about the applicant and the expected environmental effects of the proposed mineral activities. Before commencing mining operations, the applicant would be required to disclose all related companies and organizations, all claim holders, all other plans of operation held by the applicant or related entities, and all "outstanding violations" of federal and state environmental requirements.

While PMP believes that the mining industry should be accountable for environmental violations, we oppose Title II's applicant violator system on the following grounds:

First, As it is currently drafted, the Bill suggests that a company could not get a plan of operations approved if it were accused of a violation at any other site operated by it or a related entity. The Bill does not take into account the possibility that the alleged violation did not

occur and that the operator could be vindicated ultimately.

Second, The Bill fails to take into account the significance of the violation. Thus, a company could be denied a plan of operations on the basis of a purely technical, unintentional, and insignificant violation at an unrelated facility. This system could be abused by parties philosophically opposed to mining, or opposed to a particular operation for reasons other than its environmental/land use impacts. Further, the potential for delay because of an insignificant violation at another facility is particularly problematic in light of the fact (discussed above) that a plan of operations is required for virtually every step in the development of a mine, including almost all exploration.

Moreover, the amount of environmental information which the applicant must submit in the mining permit application would substantially impede the initiation of mining operations. The environmental information which the applicant must submit for virtually all operations, including almost all exploration, would include:

1. A description of the quantity and quality of surface and ground water resources in the area affected based on at least 12 months of pre-disturbance monitoring.

However, it is unclear how the applicant could perform 12 months of pre-disturbance monitoring in an area where historical operations have impacted surface or ground water. It also is unclear why the requirement is necessary for early exploration activities that themselves have little potential to affect water quality. In many cases, the early exploration will not lead to mineral development.

2. A description of "biological resources" in or adjacent to the area to be disturbed by mining operations.

3. A description of the monitoring systems to be used to determine compliance with the standards of Title II, including, but not limited to, monitoring for ground water, surface water, air and soils. Because the relevant standards include the requirement to "prevent" contamination of soils (see page 14), the monitoring requirement would amount to leak detection and the substantive requirement would be "zero discharge."

4. Accident contingency plans covering: corrective measures to mitigate impacts on fish and wildlife, ground and surface waters; neutralization of toxic materials; notification procedures and waste handling procedures. The language of this requirement is imprecise, and accordingly the scope of the requirement is unclear.

5. A description of measures to be taken to comply with applicable land use plans or restrictions based on a finding of "unsuitability" under Section 204.

6. A description of measures planned to exclude fish and wildlife from the disturbed area or to maintain facilities in a condition that is not "harmful" to fish or wildlife.

7. All environmental baseline data required by the Secretary to validate the determinations required for the approval of the plan of operations.

Significantly, the Bill does not place any limitation on the applicant's obligation to gather environmental baseline data. Thus, the Secretary conceivably could require years of baseline data gathering before allowing projects to proceed.

As these requirements plainly indicate, the applicant would be required to submit a voluminous amount of information prior to the initiation of all but the most inconsequential exploration operations. Given the speculative nature of mineral exploration, it is likely that the onerous requirements of the mining permit application would deter a substantial amount of exploration.

B. **Reclamation Standards**.

1. **Soils**.

Section 201(n)(1)(C), which concerns reclamation standards for soils, provides an excellent example of the unworkability of Title II. This section would require operators to prevent any soil contamination or toxification. Contaminated or "toxified"

soils must be decontaminated or "neutralized" and properly disposed. Importantly, the word "toxification" is not defined and does not exist elsewhere in federal environmental law. Assuming that it refers to phenomena such as acid generation, the standard is simply impossible to meet as a practical matter. Regulating the acidification of soils is fundamentally different than regulating the impact of acid generation on surface and ground water, or on soils. Indeed, such a standard presumably would prohibit the entry of <u>any</u> mining waste liquid into soils underneath a tailings impoundment or a waste rock disposal site. It is simply impossible to prevent all generation of acidic drainage from a mine site 1,000's of acres in size.

More importantly, it is not necessary to impose these onerous and impossibly costly standards on the mining industry. While miners cannot prevent the generation of acids during operations, they can take measures to insure that discharges of acid water are treated to meet federal and state surface and ground water quality standards. Similarly, soil impacts can be addressed to protect ground water and to sustain post-mining land uses.

2. <u>Stabilization And Grading</u>

The Bill requires all surface areas subject to mineral activities -- including spoil and waste piles, ore piles, subgrade ore piles and open or partially backfilled mine pits -- to be stabilized and protected during mineral activities to control erosion and to minimize attendant air and water

pollution. In addition, surface areas must be backfilled, graded and contoured to the natural topography. However, with respect to an open pit mine, the operator would be required to grade "to the extent practicable" where the Secretary determines that the open or partially backfilled pit would not pose a threat to the public health or safety or "have an adverse effect" on surface or ground water quality. Significantly, the "adverse effect" standard is not defined by reference to any established measure of water quality, such as Clean Water Act effluent limits, state ground water protection standards or other water-quality-based standards. As a result, <u>any</u> adverse impact, no matter how negligible, could block an applicant from gaining the regrading and contouring exemption. Therefore, while the open pit miner is theoretically exempt from section 201(n)(5)(A)'s more onerous grading requirement, the realities of open pit mining suggest that the exemption will rarely be applicable.

Whether pits can or should be backfilled is a complex question that involves the topography, economics and environmental questions. Indeed, where the backfill material contains sulfides that have weathered (increasing their acid potential), the adverse impacts on ground water could be vastly increased by backfilling. The current language in the Bill does not begin to accommodate the complexity of the decision whether to backfill.

3. **<u>Hydrologic Balance</u>**

The Bill's reclamation standard dealing with hydrologic balance is a source of potential confusion. Pursuant to Section 201(n)(4)(B), the operator must use the **best available demonstrated control technology** ("BDCT") to prevent acid generation and toxic drainage. "Best available demonstrated control technology" means equipment, devices systems methods, or techniques which have demonstrated engineering and economic feasibility and practicality in preventing disturbances to hydrologic balance during mineral activities and reclamation. The definition equates hydrologic balance with acid generation. While hydrologic balance and acid generation might be interrelated problems, that is not always the case. The definition requires rethinking.

Section 201(n)(4)(B) itself is confusing and in need of redrafting. This Section reads: "Mineral activities shall prevent the generation of acid and toxic drainage during the mineral activities and reclamation, to the extent possible using the best available demonstrated control technology. . ." The source of confusion stems from the placement of the comma in the sentence and the use of the words "to the extent possible." It is unclear whether acid generation must be prevented "to the extent possible," or whether it must be prevented absolutely using BDCT "to the extent possible." While the placement of the comma suggests the latter interpretation, common sense indicates that the former is correct.

5. **The Secretary Lacks Discretion to Determine Whether a Hearing on the Proposed Plan of Operations is Necessary.**

As it is currently drafted, Section 202(f) requires the Secretary to hold a public hearing if requested to do so by persons adversely affected by the proposed mineral operations who filed comments on the plan of operations. While increasing public participation in the permitting process is a laudable goal, PMP believes that the Secretary should be allowed to determine whether a hearing on the proposed plan of operations is necessary. Unless the Secretary is provided with discretion as to whether to hold a hearing, a party opposed to mining operations could delay the plan of operations by filing a baseless request for a hearing. PMP believes that providing the Secretary with discretion is necessary to eliminate the potential for abuse of the hearing process.

6. **Title II's Financial Assurance Requirements Would Impose an Unfair Burden on Miners.**

The Bill's financial assurance provision imposes uncertain and potentially long lasting financial liability on mining companies. Under Title II, the Secretary may not approve a plan of operations until the applicant provides an acceptable form of financial assurance "payable to the United States and conditional upon faithful performance of all the requirements" of the Bill. The amount of the financial assurance must be sufficient to assure the completion of reclamation as required by Title II taking into account the maximum level of financial exposure which may arise in connection with all "accident contingencies." Importantly, the phrase "accident contingencies" is not defined by the Bill. Assuming that it refers to the concept of the

"credible accident," the amount of financial assurance necessary to satisfy this requirement is virtually impossible to quantify. Indeed, the Secretary's "guess" would invariably be questioned by opponents of the mining operation. More importantly, the concept of making a company bond for every conceivable problem it might face in the future is new both in federal and in most state laws. The requirement would be expensive to comply with. EPA looked at the idea in its solid waste disposal facility criteria and rejected it. 56 Fed. Reg. 50978 (Oct. 9, 1991).

Moreover, as it is currently drafted, the Bill's financial assurance provision would impose perpetual liability on the operator. In general, the Secretary may release 50% of the total financial assurance when the operator has completed backfilling, regrading, and drainage control and has commenced revegetation. However, where surface water discharge requires treatment to meet effluent limitations and water quality standards, the Secretary may not release <u>any</u> portion of the financial assurance until applicable effluent limitations and water quality standards are met for a period of one year <u>without treatment</u>. While this requirement assumes that treatment will not be necessary to bring surface water into compliance with the applicable effluent limitations and water quality standards, it is possible in some cases that <u>permanent</u> treatment would be necessary for compliance. Therefore, where compliance with the water quality standards and effluent limitations requires <u>permanent</u> treatment, the operator's financial assurance bond would never be released.

Another example of the potentially infinite duration of liability is provided by the Bill's jurisdictional requirement. The Bill currently provides that jurisdiction would terminate upon the release of the full amount of financial assurance. However, the Secretary may reassert jurisdiction if he determines that an environmental hazard from the mineral activities exists, or that the terms and conditions of the plan of operations or surface management requirements were not fulfilled. In effect, this provision would impose perpetual liability on operators with no corresponding accountability on the Secretary. Thus, even where all parties agreed that reclamation was complete and effective, the operator would continue to face the specter of environmental liability. By denying mining companies the ability to permanently settle their financial obligations, the Bill's reclamation provisions would foster uncertainty and unnecessarily impede the ability of mining companies to compete in the future.

7. **Title II's Requirements Would Seriously and Unnecessarily Frustrate the Ability to Start Any New Mining Operation.**

Finally, PMP opposes the provisions governing unsuitability determinations under Section 204. The Secretary of the Interior, in preparing land use plans under the Federal Land Policy Management Act, and the Secretary of Agriculture, in preparing land use plans under the Forest and Rangeland Renewable Resources Planning Act, must review federal lands to determine whether they are unsuitable for mineral activities ("unsuitability review"). Because the review called for under the Bill has to be conducted before any plan of operations can be approved, all exploration

and approval of new operations would cease while the review is ongoing. Further, the criteria used for determining unsuitability are extremely broad. For instance, Interior apparently would be required to designate lands as unsuitable if mineral activities would adversely affect a candidate species for threatened or endangered status, regardless of whether the species is ultimately listed. Compounding that concern, there is no provision that would allow miners or other citizens to petition the Secretary to reverse or modify such a determination.

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We believe Title II deserves fundamental reconsideration. Congress should consider carefully how mining regulations can best be designed and implemented and by which agency, what the appropriate role of states is, and what kinds of requirements are necessary to address the environmental risks posed by mining. PMP values the chance to comment, and is willing to work to make the Bill more reasonable.

Mr. LEHMAN. Thank you very much.

I want to thank this panel as well. We are going to have to go and cast the last vote of the day and then come back.

I know Mr. Yearley has to leave, so I wanted to make a couple of comments before he does, and maybe take Mr. Fiske up here on his offer.

I said at the beginning of the hearing that my door is open. We intend to write a law this year. This is not an academic exercise, and we understand that that is a special responsibility, to do it right, because we are all going to have to live with it.

So the suggestions, comments you have, we will certainly work on. Where we can resolve problems, we will try to do that, and we will try to work together in that regard. When we have disagreements, we will just have to go through the motions and see where the votes are, but the process is here for you to use in an open fashion. We want a bill that works.

Let me also briefly say that I have been on your side of the equation, I think, as I listen to you, a few times here, particularly with respect to fights we have had around here with Federal water and subsidies to people in that regard, and with the grazing on Federal lands as well. I can tell you, having fought those out and looked at them, that in the Congress as a whole, the movement is toward getting more money out of those who use Federal resources.

The Rahall bill has an 8 percent amount in it. The President, I guess, has come out with 12–½ percent in his budget projections. You say that is too much and not calculated on an equitable basis anyway. The point is, we are going to come out with something. I don't think nothing is any longer an alternative, to have this one aspect of Federal land use be exempt from any royalties or fees, unlike timber or cattle or water, et cetera.

So there is going to be a royalty or a fee, whatever you want to call it, and we want to do it right. We want to make sure it doesn't cause the kind of damages that some of you think that it might.

We want to be careful. I listened to the testimony of Mr. Fields here. We have to be careful on this committee that we do a royalty and not do something that the Ways and Means Committee will see as a tax, and then we can send you over there where they have been told to come up with $300 billion, and don't quite have the sensitivity that we have with the mining industry, having to work with you every day. So things like that have to be thought out considerably. We will certainly do that as this process goes forward.

We will break now. Just as quickly as the Members and I can get back here, we will, and we will go ahead with the remainder of the questions.

Thank you.

[Recess.]

Mr. LEHMAN. Will the witnesses please take their positions.

Thank you very much, and thank you for being so patient today. This hearing has been contentious and has obviously taken a long time, and you have had to sit through it all. It is no consolation, but I appreciate it.

Let me get right to the bone here on a couple of issues. I had a lot of questions but I think I will reserve the right for myself and

other Members of the committee to submit them in writing to you and give you an opportunity to give a more in-depth response.

But let's cut right to the bone on the royalty issue. Last year Mr. Rahall put the figure of 8 percent gross into this bill. I guess subsequent to that then we have had the development where the administration wants to continue on the $100 location fee, I guess we will call it, and in the budget proposal that we have all heard about, the figure we have been given to meet the President's numbers is, I believe, 12½ percent.

So not only are the numbers going up, but they are coming, instead of from Mr. Rahall, from President Clinton. And so I meant when I said a few minutes ago, that it is clear to me there is going to be a royalty here.

Now, what we heard was that 8 percent was completely unsatisfactory, not workable. So we don't have to talk too much about 12 percent; you have drawn the line already at 8.

I have noticed today a little more willingness to try to work something out with you, at least in your public statements, and Dr. DeVoto, you were very forthcoming in saying you thought some royalty could be negotiated. I would like to probe that a little more and in broad outlines here if there are any ideas, or is there a number out there we have to meet, or are there some other proposals we haven't thought about? Can anybody talk beyond that? I guess not.

Mr. FISKE. We are thinking first.

Mr. LEHMAN. I hear everybody saying, we think there is a need for reform and we can go ahead with changes, but I don't hear any of those ideas coming forward. And maybe this is not the proper moment for it, but we are going to have to come up with a number and put it in the bill, and that is going to have to stand, and the number here, there is going to be other committees around here, the Budget Committee, looking at resources that we have to come up with, and sooner or later we are going to have to do that hard and fast.

There is already a number in the bill that is 50 percent lower than what the President is proposing.

Dr. DOBRA. I can't throw out a number that would be acceptable because I am in no position to bargain for anybody, but I think I can lay out the issue. The issue is that it has to be tied to profitability.

Russ Fields mentioned that Nevada has a net proceeds tax. We don't want to use the word "tax," but the key is that at a 5 percent net proceeds tax, you have to earn a dollar to owe a nickel. And from that standpoint you get some equity in there in that you are not taxing people who are losing money, or are not taking royalties from people who are losing money. The same principle applies.

So I think that is the key issue, that if it is tied to some notion of ability to pay and that is the principle of royalties and taxation that we use generally in this country, with other forms of taxation.

Mr. LEHMAN. Maybe some type of progressivity, to use a democratic word here, in the way it is operated?

Dr. DOBRA. Progressivity doesn't necessarily even have to come in it. It can be a flat rate, like in Nevada, 5 percent. But we come back to the point that you have to earn a dollar before you can owe

a nickel. If you have the 12½ percent rate, you have to earn a dollar before you can owe 12½ cents.

As you saw from these cash curves, we are talking about people who already can't meet the obligations in some cases. That is why it is so devastating.

Mr. LEHMAN. Does Canada have a fee or royalty?

Dr. DOBRA. I can't answer that. I don't know.

Mr. LEHMAN. No one knows? Mr. Fields, how much does Nevada get as a State off of that?

Mr. FIELDS. It has been running in recent years at about $30 million per year net proceeds in tax.

Mr. LEHMAN. That is how much the tax is generating, determined off of net?

Mr. FIELDS. Yes.

Mr. LEHMAN. Maybe you will make available to the committee a little more information on how you go about doing that so we could have it for the record.

[The information follows:]

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BOB MILLER
Governor

RUSSELL A. FIELDS
Executive Director

March 15, 1993

The Honorable Richard Lehman, Chairman
Subcommittee on Energy and Natural Resources
819 O'Neill House Office Building
Washington, D.C. 20515

Dear Chairman Lehman:

On behalf of Governor Bob Miller, I appreciate very much the opportunity you and the Subcommittee staff provided me to testify last week on H.R. 322, The Mineral Exploration and Development Act of 1993.

During the hearing, you requested information on Nevada's approach to calculating the State's Net Proceeds of Mines Tax. As our testimony indicated, we think the approach can provide a rational, tested model for the calculation of a net value on which to base a royalty for the production of hardrock minerals from Public Lands.

Enclosed is a copy of the State Statute, Nevada Revised Statute Chapter 362, Taxes on Patented Mines and Proceeds of Minerals, and the related regulations, Nevada Administrative Code, Chapter 362. Also enclosed is an excerpt from a 1989 report by a private consultant, Whitney & Whitney, Inc., which summarizes on pages 110 and 111 the Nevada Net Proceeds of Mines Tax. Finally, I am enclosing a copy of the foreward and summary section of the State Department of Taxation's report on the 1992-93 Net Proceeds of Minerals.

This approach to assessing the tax on the net value has worked in Nevada since Statehood in 1865. As I testified to the Subcommittee, in the early years of a mine's development there will be little or no net proceeds because of mine startup costs. However, when the mine reaches steady-state production, a net proceeds is produced and the tax is generated for the state and local governments. Mineral commodity price also impacts the amount of net proceeds. When mineral prices are low, so too are net proceeds. However, when prices are higher, the taxes generated by the net

proceeds is higher as well. This approach of government sharing in both the good times and the bad times of mining seems fair and has, we believe, had the effect of keeping mines in business. This allows the State and local communities to continue to derive the benefit of the economic activity, that is, jobs, created by the mines.

Again, we appreciate the opportunity to comment. If I, or any other agency in Nevada can be of further assistance, please call on me.

Sincerely,

Russell A. Fields
Executive Director

RAF:kl

Enclosures

cc: Congressman Barbara Vucanovich
Governor Bob Miller

STATE OF NEVADA
DEPARTMENT OF TAXATION

DIVISION OF ASSESSMENT STANDARDS
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CARSON CITY, NEVADA 89710
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NEVADA REVISED STATUTES
CHAPTER 362
TAXES ON PATENTED MINES AND PROCEEDS OF MINES
AND
REGULATIONS ADOPTED BY THE NEVADA TAX COMMISSION FOR THE DETERMINATION OF NET PROCEEDS OF MINES
(CODIFIED - NEVADA ADMINISTRATIVE CODE)
AND
EXAMPLES OF REPORTING FORMS

TIME LINE
NET PROCEEDS OF MINERALS

February 15	Annual Net Proceeds of Minerals reports for the prior calendar year are due to the Department from all operators and royalty recipients; NRS 362.110(1)(a).
March 15	Thirty day extensions (must be in writing) may be granted for filing the above annual report for all operators and royalty recipients; NRS 362.110(1)(b).
April 30 on or before	First quarter report on current year production proceeds may be filed with the Department. Quarterly report provides updated proceeds information and avoids an underestimation penalty. Department will bill any under estimation, money due within 30 days; NRS 362.115(2) and NRS 362.130(3).
June 15 on or before	All operators and royalty recipients must file with the Department an estimate of gross and net proceeds for the current calendar year; NRS 362.115(1).
June 10 not later than	Department certified net proceeds assessments and taxes due on the adjusted actual must be mailed; NRS 362.130.
July 15	Taxes due on the estimated net proceeds from all operators and royalty recipients are payable to the Department; NRS 362.115(1).
June 30	Taxes due on adjusted actual net proceeds from all operators and royalty recipients are payable to the Department; NRS 362.130.
July	State Board of Equalization appeals must be filed within 30 days after the certification is sent to the taxpayer. The person assessed must pay the tax under protest in a timely manner (date due). NRS 362.135.
July 31 on or before	Second quarter report on current year production proceeds may be filed with the Department. Quarterly report provides updated proceeds information and avoids an underestimation penalty. Department will bill any underestimation, money due within 30 days; NRS 362.115(2) and NRS 362.130(3).
August 1	Department to report to the State controller on Net Proceeds of Minerals tax distribution; NRS 362.170.
August	Taxes are delinquent within 30 days after it is due; NRS 362.160.
October 31 on or before	Third quarter report on current year production proceeds may be filed with the Department. Quarterly report provides updated proceeds information and avoids an underestimation penalty. Department will bill any underestimation, money due within 30 days; NRS 362.115(2) and NRS 362.130(3).

04/21/92

January 31
on or before

Fourth quarter report on current year production proceeds may be filed with the Department. Quarterly report provides updated proceeds information and avoids an underestimation penalty. Department will bill any underestimation, money due within 30 days; NRS 362.115(2) and NRS 362.130(3).

NOTE:

1. The fiscal year tax rate applied to the adjusted actual 1991 net proceeds will be the 1991-92 tax rates certified by the Nevada Department of Taxation on July 16, 1991.

2. The fiscal year tax rate applied to the estimated 1992 net proceeds will be the 1992-93 tax rates certified by the Nevada Tax Commission on June 25, 1992.

CHAPTER 362

TAXES ON PATENTED MINES AND PROCEEDS OF MINERALS

GENERAL PROVISIONS

ASSESSMENT OF PATENTED MINES AND MINING CLAIMS

ASSESSMENT AND TAXATION OF NET PROCEEDS OF MINERALS

CHAPTER 362

TAXES ON PATENTED MINES AND PROCEEDS OF MINERALS

CROSS REFERENCES

Administrative Procedure Act, NRS 233B.010 et seq.
Board of county commissioners defined, NRS 0.035
Patented mines—
    Annual labor required or assessment made, Const. Art. 10 § 1
    Refund of tax money paid under protest, NRS 354.220
Proceeds of mines—
    Assessment and apportionment, Const. Art. 10 § 5
    Net proceeds escaping taxation, investigation, NRS 360.230
    Sales and use taxes, proceeds of mines exempt from, NRS 372.270, 374.275
    Towns, county commissioners to levy tax on, NRS 269.115
    Unpatented mines, proceeds alone to be assessed and taxed, Const. Art. 10 § 1

—ANNOTATIONS—

Attorney General's Opinions.

Oil wells to be treated as mines for purposes of chapter. For purposes of NRS ch. 362, relating to taxes on patented mines and mine proceeds, oil wells should be treated as mines and Nevada tax commission must determine gross yield and net proceeds of oil wells on semiannual basis as provided in NRS 362.120. AGO 405 (5-9-1967)

Nonconflicting penalty provisions govern in absence of provision in chapter. Where net proceeds of mines are taxed at same ad valorem rate as other property, penalties referred to in NRS 362.160 in connection with collection of delinquent taxes are penalties imposed by NRS 361.483 for collection of delinquent property taxes generally, because former NRS 362.220 provides that all nonconflicting laws relating to collection, enforcement and penalties for nonpayment of taxes shall apply, impliedly in absence of any specific penalty provision in NRS ch. 362. AGO 508 (5-8-1968)

GENERAL PROVISIONS

362.010 Definitions. As used in this chapter, unless the context otherwise requires:

1. "Mine" means an excavation in the earth from which ores, coal or other mineral substances are extracted, or a subterranean natural deposit of minerals located and identified as such by the staking of a claim or other method recognized by law. The term includes a well drilled to extract minerals.

2. "Mineral" includes oil, gas and other hydrocarbons, but does not include sand, gravel or water, except hot water or steam in an operation extracting geothermal resources for profit.

3. "Patented mine or mining claim" means each separate, whole or fractional patented mining location, whether such whole or fractional mining location is covered by an independent patent or is included under a single patent with other mining locations.

[1:206:1915; 1919 RL p. 3009; NCL § 6592]—(NRS A 1975, 317; 1989, 33)

—ANNOTATIONS—

Attorney General's Opinions.

Assessment of fractional mining claim. Fractional mining claim should be assessed at not less than $5 when no development work done. AGO 151 (12-2-1914)

Mineral survey plat as proof of patented mining location. Mineral survey plat, without further evidence of ownership, is insufficient proof to warrant placing alleged patented mine on tax roll or to constitute person named on plat as owner. AGO 370 (12-21-1966)

ASSESSMENT OF PATENTED MINES AND MINING CLAIMS

362.030 County assessor to assess surface of patented mines and mining claims; exceptions. The county assessor shall assess the surface of each patented mine and mining claim in his county for which an affidavit was not filed pursuant to NRS 362.050, 362.070 and 362.090 and return the assessment as required by law.

[3:206:1915; 1919 RL p. 3009; NCL § 6594]—(NRS A 1989, 33)

—ANNOTATIONS—

Administrative Regulations.
Patented Mines, NAC 362.410

Reviser's Note.
"Return the assessment as required by law." replaced "return the said assessment as is now required by law."

362.040 Exclusion of assessment from roll. Upon receipt of an affidavit from the county clerk pursuant to NRS 362.050 stating that at least $100 in development work has been actually performed upon the patented mine or mining claim during the federal mining assessment work period ending within the year before the fiscal year for which the assessment has been levied, the assessor shall exclude from the roll the assessment against the patented mine or mining claim named in the affidavit.

[4:206:1915; A 1933, 233; 1931 NCL § 6595]—(NRS A 1989, 33, 1831; 1991, 2105)

—ANNOTATIONS—

Federal and Other Cases.

Labor performed by stockholder of mining corporation as development work. Stockholder of mining corporation has such beneficial interest in corporate mining property that labor performed by him will qualify as annual assessment labor. Wailes v. Davies, 164 Fed. 397 (9th Cir. 1908)

Attorney General's Opinions.

Contents of affidavit. Before assessment against patented mine may be stricken from rolls affidavit must show: That amount equal to $100 had been expended on each claim; it was done during calendar year in question; description of work performed, when work done, by whom work done. AGO 88 (9-6-1917)

Affidavit to be filed within calendar year for which exemption claimed. Affidavit contemplated for exemption from taxation of patented mines in ch. 206, Stats. 1915 (cf. NRS 362.040), requires filing of such affidavit within calendar year for which such exemption is claimed. AGO 145 (1-18-1918)

Work may be done at any time during year. If work upon patented claim is done at any time within year, assessment should be stricken, notwithstanding assessment marked delinquent. AGO 152 (12-4-1922)

Timely affidavit required. Tax assessment imposed on patented mine under NRS 362.020 may not be stricken from tax roll unless there is timely presentation of affidavit of work provided for in NRS 362.040. AGO 39 (4-21-1959)

Proof of work performed during previous fiscal year should be allowed. NRS

362.040 should be construed to allow owner of patented mine to present proof to board of equalization during current fiscal year of labor performed thereon during prior fiscal year. AGO 39 (4-21-1959)

362.050 Affidavit of labor: Requirement for exemption of surface of patented mine or mining claim from taxation; form and contents.

1. To obtain the exemption of the surface of a patented mine or mining claim from taxation ad valorem, pursuant to section 5 of article 10 of the constitution of this state, the owner must submit an affidavit to the county clerk for the county in which the mine is located on or before December 30 covering work done during the 12 months next preceding 12 a.m. on September 1 of that year. The exemption then applies to the taxes for the fiscal year beginning on July 1 following the filing of the affidavit. Upon receipt of such an affidavit, the county clerk shall cause it to be recorded in the office of the county recorder and transmit it to the county assessor.

2. The affidavit of labor must describe particularly the work performed, upon what portion of the mine or claim, and when and by whom done, and may be substantially in the following form:

State of Nevada }
}ss.
County of.....}

....., being first duly sworn, deposes and says: That development work worth at least $100 was performed upon the ..... patented mine or mining claim, situated in the ..... Mining District, County of ...., State of Nevada, during the federal mining assessment work period ending within the year 19..... The work was done at the expense of ....., the owner (or one of the owners) of the patented mine or mining claim, for the purpose of relieving it from the tax assessment. It was performed by ....., at about ..... feet in a ..... direction from the monument of location, and was done between the ..... day of ....., 19....., and the ..... day of ....., 19....., and consisted of the following work:

.....
.....
.....
(Signature)

Subscribed and sworn to before me
this ..... day of ....., 19.....

.....
Notary Public (or other person
authorized to administer oaths)

[7:206:1915; A 1933, 233; 1931 NCL § 6598]—(NRS A 1975, 317; 1985, 1221, 1503; 1989, 33; 1991, 2105)

—ANNOTATIONS—

Attorney General's Opinions.

Contents of affidavit. Before assessment against patented mine may be stricken from rolls affidavit must show: That amount equal to $100 had been expended on each claim; it was done during calendar year in question; description of work performed, when work done, by whom work done. AGO 88 (9-6-1917)

Statement that mines were "worked as a unit" not sufficient. Affidavit required by NCL § 6598 (cf. NRS 362.050) relating to annual development work on mines must state that mines are "contiguous" rather than "worked as a unit" before tax exemption provided by NCL § 6600 (cf. NRS 362.070) will attach. AGO 155 (8-2-1944)

362.060 Who may make affidavit. The affidavit may be made by the owner or agent of the owner, or the person performing the labor, or by any person familiar with the facts, on behalf of the owner.

[8:206:1915; 1919 RL p. 3010; NCL § 6599]

362.070 Contiguous patented mines or mining claims: Performance of work on one mine. The owner of two or more contiguous patented mines or mining claims may perform all the work required by section 5 of article 10 of the constitution of this state upon one mine or claim only; but the aggregate amount of such work must be equal to $100 for each of the contiguous patented mines or claims.

[9:206:1915; 1919 RL p. 3010; NCL § 6600]—(NRS A 1989, 34)

—ANNOTATIONS—

Attorney General's Opinions.

Statement that mines were "worked as a unit" not sufficient. Affidavit required by NCL § 6598 (cf. NRS 362.050) relating to annual development work on mines must state that mines are "contiguous" rather than "worked as a unit" before tax exemption provided by NCL § 6600 (cf. NRS 362.070) will attach. AGO 155 (8-2-1944)

362.080 Affidavit to be recorded in office of county recorder. Repealed. (See chapter 638, Statutes of Nevada 1991, at page 2107.)

362.090 One affidavit may be recorded for labor on several patented mines or mining claims. A single affidavit may be recorded for the labor on several patented mines or mining claims belonging to the same person or held in common ownership, provided all are located in the same county.

[11:206:1915; 1919 RL p. 3011; NCL § 6602]—(NRS A 1989, 34, 1832)

362.095 Method of taxation of patented mine or mining claim used for purpose other than mining or agriculture.

1. Whenever any portion of a patented mine or mining claim is used by the patentee or a successor in interest for a purpose unrelated to mining or agriculture, the portion of such patented mine or mining claim so used shall cease to be a patented mine or mining claim or part thereof and shall be taxed as other real property is taxed.

2. For the purpose of this section, a dwelling placed upon a patented mine or mining claim to be occupied by the operator of such patented mine or mining claim or his agent is not a use unrelated to mining.

3. Whenever any patented mine or mining claim is taxed as real property, such taxation shall not affect the status of contiguous patented mines or mining claims.

(Added to NRS by 1967, 839; A 1989, 34)

—ANNOTATIONS—

Administrative Regulations.
Patented Mines, NAC 362.410

ASSESSMENT AND TAXATION OF NET PROCEEDS OF MINERALS

362.100 Duties of department.

1. The department shall:

(a) Investigate and determine the net proceeds of all minerals extracted and certify them as provided in NRS 362.100 to 362.240, inclusive.

(b) Appraise and assess all reduction, smelting and milling works, plants and facilities, whether or not associated with a mine, all drilling rigs, and all supplies, machinery, equipment, apparatus, facilities, buildings, structures and other improvements used in connection with any mining, drilling, reduction, smelting or milling operation as provided in chapter 361 of NRS.

2. As used in this section, "net proceeds of all minerals extracted" includes the proceeds of all:

(a) Operating mines;

(b) Operating oil and gas wells;

(c) Operations extracting geothermal resources for profit, except an operation which uses natural hot water to enhance the growth of animal or plant life; and

(d) Operations extracting minerals from natural solutions.

[Part 13:177:1917; 1919 RL p. 3202; NCL § 6554] + [1:77:1927; NCL § 6578]—(NRS A 1975, 1675; 1983, 2088; 1985, 1305; 1989, 34)

—ANNOTATIONS—

Nevada Cases.

Only net proceeds subject to taxation. Legislature, in NCL § 6578 (cf. NRS 362.100), has provided that only the net proceeds of mines, as distinguished from gross yield, is to be taxed. Goldfield Consol. Mines Co. v. State, 60 Nev. 241, 106 P.2d 613 (1940), cited, Koyen v. Lincoln Mines, Inc., 63 Nev. 325, at 328, 171 P.2d 364 (1946)

Calculation of net proceeds. Under NCL § 6578 (cf. NRS 362.100), NCL § 6579 (cf. NRS 362.110), and NCL § 6580, as amended by ch. 68, Stats. 1937 (cf. NRS 362.120), net proceeds of mines, for purpose of taxation, are to be determined by ascertaining gross yield and deducting therefrom deductions authorized by statute. Goldfield Consol. Mines Co. v. State, 60 Nev 241, 106 P.2d 613 (1940), cited, Koyen v. Lincoln Mines, Inc., 63 Nev. 325, at 328, 171 P.2d 364 (1946)

Attorney General's Opinions.

Right to receive royalty to be assessed as personal property. Right of owner of mining claim to receive royalty from lessee should be assessed as personal property and tax collected thereon as for other personal property. AGO (12-24-1901)

Classification of proceeds as mineral or nonmineral not significant. Whether or not gypsum is classified as mineral, it is proceeds of mine and taxable as such. AGO (9-27-1909)

"Cleanup" as proceeds. "Cleanup" of abandoned mine is subject to tax as proceeds. AGO (12-31-1910)

Costs of industrial insurance properly included in calculating expenses. Industrial insurance costs may be legally included in operating expenses in arriving at net proceeds of mines. AGO 77 (7-21-1919)

Lease and each sublease to be treated as separate mining units for purposes of tax. Where lessee of mining ground subleases, original lease and each sublease thereunder should be treated as separate mining unit for net proceeds tax, and lessee and each sublessee is required to file statement provided for under RL § 3690 (cf. NRS 362.110) and pay tax provided for under RL § 3687 (cf. NRS 362.140). AGO 83 (8-21-1923)

"Mine" and "mining claim" include "tailings." Words "mine" and "mining claim," as used in revenue laws of Nevada, are broad enough to include word "tailings" without express mention thereof. AGO 178 (6-25-1935)

Net proceeds are personal property; taxation of federal instrumentality. Net proceeds of mines are considered personal property, whereby they are exempt under Act of Congress giving state authority to tax real property of instrumentality of Federal Government, but not personal property. AGO 9 (2-16-1943)

Net proceeds of oil wells taxable. Net proceeds of oil wells are taxable under NCL §§ 6578-6591 (cf. NRS 362.100-362.130, 362.160 and 362.180 et seq.), which provide for taxation of net proceeds of mines. AGO B939 (7-20-1950)

Commission not empowered to establish minimum amount of net proceeds subject to taxation. Tax commission may not omit tax assessment on mines with net proceeds of less than $100, although collection costs exceed amount of revenue collected, because NRS 362.100 et seq. do not empower commission to fix minimum for assessment. AGO 335 (5-10-1966)

362.105 "Royalty" defined. As used in NRS 362.100 to 362.240, inclusive, unless the context otherwise requires:

1. "Royalty" means a portion of the proceeds from extraction of a mineral which is paid for the privilege of extracting the mineral.

2. "Royalties" do not include:

(a) Rents or other compensatory payments which are fixed and certain in amount and payable periodically over the duration of the lease regardless of the extent of extractions; or

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(b) Minimum royalties covering periods when no mineral is extracted if the payments are fixed and certain in amount and payable on a regular periodic basis.

(Added to NRS by 1975, 135; A 1989, 35)

362.110 Annual statement; annual list.

1. Every person extracting any mineral in this state or receiving any royalty:

(a) Shall, on or before February 15 of each year, except as otherwise provided in paragraph (b), file with the department a statement showing the gross yield and claimed net proceeds from each geographically separate operation where a mineral is extracted by that person during the calendar year immediately preceding the year in which the statement is filed.

(b) May have up to 30 additional days to file the statement, if beforehand he makes written application to the department and the department finds good cause for the extension.

2. The statement must:

(a) Show the claimed deductions from the gross yield in the detail set forth in NRS 362.120. The deductions are limited to the costs incurred during the period covered by the statement.

(b) Be in the form prescribed by the department.

(c) Be verified by the manager, superintendent, secretary or treasurer of the corporation, or by the owner of the operation, or, if the owner is a natural person, by someone authorized in his behalf.

3. Each recipient of a royalty as described in subsection 1 shall annually file with the department a list showing each of the lessees responsible for taxes due in connection with the operation or operations included in the statement filed pursuant to subsections 1 and 2.

[2:77:1927; A 1929, 120; NCL § 6579]—(NRS A 1971, 562; 1973, 1293; 1975, 1675; 1979, 819; 1983, 878; 1989, 35)

—ANNOTATIONS—

Administrative Regulations.

Proceeds of Mines, NAC 362.010 et seq.

Nevada Cases.

Calculation of net proceeds. Under NCL § 6578 (cf. NRS 362.100), NCL § 6579 (cf. NRS 362.110), and NCL § 6580, as amended by ch. 68, Stats. 1937 (cf. NRS 362.120), net proceeds of mines, for purpose of taxation, are to be determined by ascertaining gross yield and deducting therefrom deductions authorized by statute. Goldfield Consol. Mines Co. v. State, 60 Nev. 241, 106 P.2d 613 (1940), cited, Koven v. Lincoln Mines, Inc., 63 Nev. 325, at 328, 171 P.2d 364 (1946)

Attorney General's Opinions.

Gypsum mines subject to taxation. Gypsum mines are subject to taxation under statute relating to taxation of proceeds of mines, gypsum being mineral. AGO (4-12-1912)

Statement required by section to be filed by lessee and each sublessee of mining ground. Where lessee of mining ground subleases, original lease and each sublease thereunder should be treated as separate mining unit for net proceeds tax, and lessee and each sublessee is required to file statement provided for under RL § 3690 (cf. NRS 362.110) and pay tax provided for under RL § 3687 (cf. NRS 362.140). AGO 83 (8-21-1923)

Ore mined in excess of quota fixed by contract part of gross yield of mine. Ore mined in excess of quota set by Federal Government contract and for which operator receives amount over price set under quota is taxable as gross yield of mine and is not classified as bounty or gift. AGO 69 (8-23-1943)

Calculation of gross yield not limited to market value of extracted ore. Under NCL § 6579 (cf. NRS 362.110), which provides for taxation of proceeds of mines, gross yield contemplates computation of proceeds of extracted ore in dollars and cents, and is not limited to market value of such ore but contemplates computation of proceeds derived by mine owner or operator of all moneys received upon and from actual amount of ore mined and disposed of. AGO 69 (8-23-1943)

Contractor who mines ore for owner of mine not lessee for purposes of section. Contractor who mines and stockpiles ore for mine's owner under contract obligating owner to pay specific amount for each ton of ore stockpiled is not lessee of mine and is not required to comply with NRS 362.110, relating to statements to be filed with Nevada tax commission by mine operators. AGO 147 (3-22-1960)

Records of person who contracts with mine owner may be examined to verify costs set forth in statement filed by owner. Under provisions of NRS 362.200, relating to powers of Nevada tax commission, commission may examine records of contractor who mines and stockpiles ore for mine owner to verify allegations of operating costs contained in mine owner's statement filed under NRS 362.110, relating to statements to be filed with Nevada tax commission by mine operators. AGO 147 (3-22-1960)

Arbitrary assessment may be rescinded after filing of proper statement. Where, owing to failure of mine operator to file proper gross yield and net proceeds statement under NRS 362.110, Nevada tax commission levied arbitrary assessment under NRS 362.230, and where amended statement for period revealed net loss, commission had authority to rescind such assessment. AGO 465 (11-28-1967)

Penalty imposed after failure to file statement not penalty for nonpayment of taxes. Where taxpayer does not file reports required by NRS 362.110 and penalty is imposed thereunder pursuant to NRS 362.230, such penalty is paid to state because it is intended to defray cost of obtaining information required in reports and is not penalty for nonpayment of taxes, which would be additional tax, distributable to county and state. AGO 495 (3-13-1968)

362.115 Statement of estimated gross yield and net proceeds for current calendar year; payment of estimated tax; credit against final certification or refund; quarterly report of actual amounts. In addition to the statement required by subsection 1 of NRS 362.110, each person who is required to file that statement:

1. Shall, on or before June 15 of each year, file with the department a statement showing the estimated gross yield and estimated net proceeds from each such operation for the entire current calendar year, and shall pay the tax upon the net proceeds so estimated to the department on or before July 15 of that year. If an estimate is filed, the amount due under the final certification pursuant to NRS 362.130 is the difference between the total tax established upon the certification and the sum of the estimated payments made or credited, if any, for that calendar year. If the sum of the estimated payments exceeds the total tax, the taxpayer is entitled to credit the excess against the ensuing estimates or final taxes due until it is exhausted, or, if the taxpayer files a statement with the department which indicates that he will have no tax liability for the next calendar year, upon verification by the department, the taxpayer is entitled to receive a refund.

2. May file with the department a quarterly report stating an estimate for the year and the actual quarterly amounts of production, gross yield and net proceeds as of March 31, June 30, September 30 and December 31, to establish whether liability for a penalty exists. If the person chooses to submit such reports, the reports must be submitted on a form prescribed by the department no later than the last day of the month following the end of the calendar quarter.

(Added to NRS by 1987, 2141; A 1989, 36, 1536)

—ANNOTATIONS—

Reviser's Note.

Ch. 872, Stats. 1987, the source of this section, contains a preamble not included in NRS, which reads as follows:

"WHEREAS, This 64th session of the legislature has extensively considered amending the constitution of the State of Nevada to permit taxation of the net proceeds of mines separately from the taxation ad valorem of other property, but any increase of the taxes from this source would not occur during the coming biennium when the need for revenue will be pressing;"

Ch. 872 also contains the following provisions not included in NRS:

"Sec. 3. Each county treasurer who receives an estimated payment for the calendar year 1987 shall remit to the state controller for deposit in the state general fund the entire amount of the estimated payments made for that year.

Sec. 4. To provide additional revenue for the state before the process of amending the constitution of the State of Nevada as it concerns the taxation of mines can be accomplished, the department of taxation is authorized to accept from any person, in addition to the payment actually due the appropriate county under the statutes in effect at the time of payment, one or more payments on account of the tax the payer estimates will be due the state if the contemplated amendment to the constitution is adopted. Any payment so made and accepted must be deposited in the state treasury to the credit of the state general fund.

Sec. 5. The amount of each payment so made must be recorded separately by the department, but the taxpayer is entitled to credit for that amount only:

1. In the fiscal year 1992-1993 or thereafter;

2. If the total revenue accepted by the department of taxation pursuant to section 4 of this act as payments on account of the tax the payer estimates will be due the state if the contemplated amendment to the constitution is adopted is $10,500,000 or more for the fiscal year 1988-1989;

3. If the total revenue from the tax on the net proceeds of mines in the year when the credit is claimed exceeds $50,000,000; and

4. To the extent in any one fiscal year of 10 percent of the credit available on July 1, 1992.

Sec. 6. If the proposed constitutional amendment is not agreed to by the 65th session of the legislature or is not approved by a vote of the people, any amount paid pursuant to section 4 of this act and all accrued interest and income earned on that money shall be deemed a gift to the state and is thereafter not refundable and must not be credited against any tax liability of the person making the payment.

Sec. 7. 1. This section and sections 1, 2 and 3 of this act become effective on July 1, 1987.

2. Sections 4, 5 and 6 of this act become effective on July 1, 1987, if and only if this legislature has proposed an amendment to the constitution of the State of Nevada which would permit a tax limited to the net proceeds of mines but at a rate different from other taxes ad valorem. Sections 4, 5 and 6 of this act expire by limitation:

(a) On July 1, 1992, for the purpose of authorizing the acceptance of payments in addition to those legally due; and

(b) For all other purposes, upon the exhaustion of the last of any credits due to any taxpayer under this act."

362.120 Computation of gross yield and net proceeds.

1. The department shall, from the statement and from all obtainable data, evidence and reports, compute in dollars and cents the gross yield and net proceeds of the period covered by the statement.

2. The gross yield must include the value of any mineral extracted which was:

(a) Sold;

(b) Exchanged for any thing or service;

(c) Removed from the state in a form ready for use or sale; or

(d) Used in a manufacturing process or in providing a service,

during the period covered by the statement.

3. The net proceeds are ascertained and determined by subtracting from the gross yield the following deductions for costs incurred during that period, and none other:

(a) The actual cost of extracting the mineral.

(b) The actual cost of transporting the mineral to the place or places of reduction, refining and sale.

(c) The actual cost of reduction, refining and sale.

(d) The actual cost of marketing and delivering the mineral and the conversion of the mineral into money.

(e) The actual cost of maintenance and repairs of:

(1) All machinery, equipment, apparatus and facilities used in the mine.

(2) All milling, refining, smelting and reduction works, plants and facilities.

(3) All facilities and equipment for transportation except those that are under the jurisdiction of the public service commission of Nevada as public utilities.

(f) The actual cost of fire insurance on the machinery, equipment, apparatus, works, plants and facilities mentioned in paragraph (e).

(g) Depreciation of the original capitalized cost of the machinery, equipment, apparatus, works, plants and facilities mentioned in paragraph (e). The annual depreciation charge consists of amortization of the original cost in a manner prescribed by regulation of the Nevada tax commission. The probable life of the property represented by the original cost must be considered in computing the depreciation charge.

(h) All money expended for premiums for industrial insurance, and the actual cost of hospital and medical attention and accident benefits and group insurance for all employees.

(i) All money paid as contributions or payments under the unemployment compensation law of the State of Nevada, as contained in chapter 612 of NRS, all money paid as contributions under the Social Security Act of the Federal Government, and all money paid to either the State of Nevada or the Federal Government under any amendment to either or both of the statutes mentioned in this paragraph.

(j) The actual cost of developmental work in or about the mine or upon a group of mines when operated as a unit.

(k) All money paid as royalties by a lessee or sublessee of a mine or well, or by both, in determining the net proceeds of the lessee or sublessee or both.

4. Royalties deducted by a lessee or sublessee constitute part of the net proceeds of the minerals extracted, upon which a tax must be levied against the person to whom the royalty has been paid.

5. Every person acquiring property in the State of Nevada to engage in the extraction of minerals and who incurs any of the expenses mentioned in subsection 3 shall report those expenses and the recipient of any royalty to the department on forms provided by the department.

6. The several deductions mentioned in subsection 3 do not include any expenditures for salaries, or any portion of salaries, of any person not actually engaged in:

(a) The working of the mine;

(b) The operating of the mill, smelter or reduction works;

(c) The operating of the facilities or equipment for transportation;

(d) Superintending the management of any of those operations; or

(e) The State of Nevada, in office, clerical or engineering work necessary or proper in connection with any of those operations.

[3:77:1927; A 1937, 139; 1939, 256; 1931 NCL § 6580]—(NRS A 1971, 926; 1973, 1294; 1975, 1676; 1979, 820; 1983, 254; 1989, 36, 1533; 1991, 146)

—ANNOTATIONS—

Administrative Regulations.

Proceeds of Mines, NAC 362.010 et seq.

Nevada Cases.

Calculation of net proceeds. Under NCL § 6578 (cf. NRS 362.100), NCL § 6579 (cf. NRS 362.110), and NCL § 6580, as amended by ch. 68, Stats. 1937 (cf. NRS 362.120), net proceeds of mines, for purpose of taxation, are to be determined by ascertaining gross yield and deducting therefrom deductions authorized by statute. Goldfield Consol. Mines Co. v. State, 60 Nev. 241, 106 P.2d 613 (1940), cited, Koyen v. Lincoln Mines, Inc., 63 Nev. 325, at 328, 171 P.2d 364 (1946)

Under terms of contract, tax imposed on royalties of lessor of mine were payable by lessee. Where lease of mine provided that lessee would pay all state and county taxes on net proceeds of mines resulting from production by lessee, tax imposed on royalties of lessor by ch. 174, Stats. 1939 (cf. NRS 362.120) was payable by lessee. Koyen v. Lincoln Mines, Inc., 63 Nev. 325, 171 P.2d 364 (1946)

Royalties subject to taxation on basis of net proceeds. Under provisions of NCL § 6580 (cf. NRS 362.120), which provides that royalties paid by lessee of mine shall be deductible in computing net proceeds taxable to lessee, but shall constitute part of gross yield to lessor for purposes of computing net proceeds taxable to lessor, it was plainly intent of legislature to bring royalties within sphere of property taxable on basis of net proceeds. Koyen v. Lincoln Mines, Inc., 63 Nev. 325, 171 P.2d 364 (1946)

Royalty to be taxed on basis of cash value where recipient has no operating cost. Because ch. 174, Stats. 1939 (cf. NRS 362.120), imposing tax on royalties received by lessor of mine, provides no method of determining "net proceeds" in situation where lessor has no operating cost, royalty must be taxed on basis of its cash value. Koyen v. Lincoln Mines, Inc., 63 Nev. 325, 171 P.2d 364 (1946)

Federal and Other Cases.

Severed ore as personal property. Sec. 6, ch. 35, Stats. 1871 (cf. NRS 362.150), creating lien on mines or mining claims for taxes upon their net proceeds, is not invalid as tax upon, or lien against, property of United States because it distinguishes between patented and unpatented claims, lien attaching in the first case to mine itself, in the second only to possessory right of miner which may be transferred in any manner without infringing the title of United States. Tax upon net proceeds itself, imposed by sec. 2, ch. 35, Stats. 1871 (cf. NRS 362.120), is tax upon ore as personal property of miner, not real property of United States. Forbes v. Gracey, 94 U.S. 762, 24 L. Ed. 313 (1877)

Attorney General's Opinions.

Meaning of "actual cost of extracting." Term "actual cost of extracting," as used in statute relating to taxation of net proceeds of mines, means cost of breaking or removing ore from vein, lode or deposit. AGO (4-24-1911)

Deductions limited to those provided by section; federal taxes not to be deducted in calculating net proceeds. No reduction from gross proceeds of mines in order to arrive at net proceeds for purpose of taxation may be made except those provided for by RL § 3687 (cf. NRS 362.120), and federal taxes are not within deductions of such statute and may not be deducted in arriving at net proceeds. AGO 147 (1-25-1918)

Constitutional definition of "net proceeds" compared. Term "net proceeds" in mining, as used in Nev. Art. 10, § 1, is identical with that defined by RL § 3687 (cf. NRS 362.140). AGO 147 (1-25-1918)

Costs of industrial insurance may be included in operating expenses. Industrial insurance costs may be legally included in operating expenses in arriving at net proceeds of mines. AGO 77 (7-21-1919)

Cost of construction and equipment of mine not to be deducted. In computing net proceeds of mines under RL § 3687 (cf. NRS 362.120) deductions do not include cost of construction and equipment of mine. AGO 80 (8-2-1919)

Lessee and each sublessee of mining ground to be treated as separate mining units; each liable for tax. Where lessee of mining ground subleases, original lease and each sublease thereunder should be treated as separate mining unit for net proceeds tax, and lessee and each sublessee is required to file statement provided for under RL § 3690 (cf. NRS 362.110) and pay tax provided for under RL § 3687 (cf. NRS 362.140). AGO 83 (8-21-1923)

Ore mined in excess of amount established by contract taxable as part of yield of mine. Ore mined in excess of quota set by Federal Government contract and for which operator receives amount over price set under quota is taxable as gross yield of the mine and is not classified as bounty or gift. AGO 69 (8-23-1943)

Gross yield not limited to market value of extracted ore. Under NCL § 6579 (cf. NRS 362.110), which provides for taxation of proceeds of mines, gross yield contemplates computation of proceeds of extracted ore in dollars and cents, and is not limited to market value of such ore but contemplates computation of proceeds derived by mine owner or operator of all moneys received upon and from actual amount of ore mined and disposed of. AGO 69 (8-23-1943)

Cancellation payment made under mining contract not taxable as net proceeds. Cancellation payment, for total unfilled production, made by Federal Government under mining contract, does not represent return for ore produced from the mine, net proceeds of mines, or production from mine as defined under Nevada law, and is, therefore, not taxable as net proceeds. AGO 173 (11-4-1944)

No deduction for payments made into fund under company retirement plan. Under 1931 NCL § 6580 (cf. NRS 362.120), which provides for certain deductions from gross yield of mine to arrive at net proceeds for tax purposes, moneys paid into private fund under company retirement plan for its employees cannot be deducted. AGO 438 (4-1-1947)

Where initial sale of ore made to wholly owned subsidiary, price obtained on subsequent sale may be used as basis for determining net proceeds. In determining net proceeds of mine, tax commission is not bound by price at which producing corporation sold ore to wholly owned subsidiary but may ignore corporate entities and base assess-

ment on price at which subsidiary sold ores. AGO 738 (4-14-1949)

No deduction for cost of constructing road to mine. Because road constructed to mine is considered capital investment, and because it is not enumerated in deductions provided in ascertaining net proceeds (see 1931 NCL § 6580, cf. NRS 362.120), it may not be deducted as business expense for tax purposes. AGO 757 (5-16-1949)

Losses sustained in certain areas of mining operation not deductible. Deficit in boardinghouse operations and commissaries cannot be charged as deductible items, as provided in 1931 NCL § 6580 (cf. NRS 362.120), to determine net proceeds. AGO 780 (7-21-1949)

Deduction allowed for cost of maintaining boardinghouse; no deduction for loss incurred through operation of boardinghouse. Cost of maintenance and repair of boardinghouse kept for mining employees may be deducted from gross yield in order to obtain net proceeds of mines subject to tax. However, loss incurred through operation of such boardinghouse cannot be deducted. AGO 330 (12-5-1957)

Deduction allowed for maintenance of roads and walks and of water and power facilities. Costs of maintenance and repair of roads and walks in mining housing area and of water and power facilities may be deducted from gross yield in determining net proceeds of mines tax. AGO 330 (12-5-1957)

Oil wells to be treated as mines for purposes of section. For purposes of NRS ch. 362, relating to taxes on patented mines and mine proceeds, oil wells should be treated as mines and Nevada tax commission must determine gross yield and net proceeds of oil wells on semiannual basis as provided in NRS 362.120. AGO 405 (5-9-1967)

Deduction allowed for industrial insurance premiums. In determining net proceeds of mine upon which tax is assessed, industrial insurance premiums arising by reason of participation in insurance required by Nevada industrial commission are deductible from gross proceeds of mine pursuant to subsection 2(h) of NRS 362.120. AGO 498 (3-27-1968)

Actual sale required to determine gross yield; no assessment of tax where sale not possible due to strike. Where concentrates could not be sold because of strike, tax on net proceeds of mines could not be assessed or paid on estimated value of stockpiled ore and concentrates, because gross yield for purposes of NRS 362.120 can be determined only from actual sales. AGO 532 (8-30-1968) Modified, AGO 559 (2-5-1969)

Value of stockpiled material may be considered in determining gross yield and net proceeds, if material stockpiled because of emergency. Under NRS 362.120, which provides that Nevada tax commission shall, from all obtainable data, evidence and reports compute gross yield and net proceeds of mine, commission may consider value of stockpiled material if such material was stockpiled because of emergency conditions. AGO 559 (2-5-1969)

362.130 Preparation and mailing of certificate of amount of net proceeds and tax due; penalty for underpayment; date tax and penalty due.

1. When the department determines from the annual statement the net proceeds of any minerals extracted, it shall prepare its certificate of the amount of the net proceeds and the tax due and shall send a copy to the owner of the mine, operator of the mine, or recipient of the royalty, as the case may be.

2. The certificate must be prepared and mailed not later than June 10 immediately following the month of February during which the statement was filed.

3. If the amount paid pursuant to NRS 362.115 is less than 90 percent of the amount certified pursuant to this section, the amount due must include a penalty of 10 percent of the underpayment unless:

(a) The amount paid pursuant to NRS 362.115 is equal to or greater than the total tax liability of the operation for the immediately preceding calendar year; or

(b) The person files quarterly reports pursuant to subsection 2 of NRS 362.115 in a timely manner for that year and pays the additional amount due within 30 days after the quarterly report that indicates the additional estimated tax liability is filed with the department. The additional estimated tax liability must be calculated by determining the difference between the revised estimates of net proceeds based on the recent production figures as indicated by the quarterly reports and the original estimate supplied on June 15 of that year.

4. The taxes and any penalty are due on June 30 of that year.

[4:77:1927; NCL § 6581]—(NRS A 1969, 561; 1973, 1295; 1975, 1677; 1979, 822; 1981, 809; 1987, 168, 2141; 1989, 38, 1537; 1991, 653)

362.135 Appeal of certification to state board of equalization; payment of tax pending determination of appeal.

1. Any person dissatisfied by any certification of the department may appeal from that determination to the state board of equalization. The appeal must be filed within 30 days after the certification is sent to the taxpayer.

2. Pending determination of the appeal, the person certified as owing the tax shall pay it on or before the date due, and the tax is considered to be paid under protest

(Added to NRS by 1977, 1052; A 1987, 169; 1989, 38)

362.140 Rate of tax upon net proceeds.

1. Except as otherwise provided in this section, the rate of tax upon the net proceeds of each geographically separate extractive operation depends upon the ratio of the net proceeds to the gross proceeds of that operation as a whole, according to the following table:

Net Proceeds as Percentage of Gross Proceeds	Rate of Tax as Percentage of Net Proceeds
Less than 10	2.00
10 or more but less than 18	2.50
18 or more but less than 26	3.00
26 or more but less than 34	3.50
34 or more but less than 42	4.00
42 or more but less than 50	4.50
50 or more	5.00

2. If the combined rate of tax ad valorem which would be assessed but for the provisions of section 5 of article 10 of the constitution of this state, including any rate levied by the State of Nevada, upon property at the situs of

the operation is more than 2 percent, the minimum rate of tax under this section equals that rate of tax ad valorem.

3. The rate of tax upon royalties is 5 percent.

4. The rate of tax upon the net proceeds of a geothermal operation taxable pursuant to NRS 362.100 is the combined rate of tax ad valorem applicable to the property at the situs of the operation.

5. The rate of tax upon an operation for which the net proceeds in a calendar year exceed $4,000,000 is 5 percent.

[Part 75:99:1891; C § 1147; RL § 3687; NCL § 6481]—(NRS A 1989, 38, 1537)

—ANNOTATIONS—

Reviser's Note.

The revised section comes from a portion of sec. 75, ch. 99, Stats. 1891 (NCL § 6481). With the enactment of ch. 77, Stats. 1927, the old 1891 statutory provisions were not expressly repealed. In 1945, the attorney general rendered AGO 238 (11-1-1945) that NCL § 6481 had been repealed except for the declaration that the net proceeds of mines are subject to ad valorem taxation at the same rate as other property is taxed.

Nevada Cases.

Taxes levied under section must be included in assessment roll. Where statute provided that county assessor of each county should include in his assessment roll "all taxes levied by authority of law for county purposes," taxes levied on proceeds of mines were required to be included in assessment roll under Nev. Art. 10, § 1, which provides for uniform rates of assessment and taxation, and under RL § 3687 (cf. NRS 362.140), which provides that net proceeds of any mine shall be taxed at same rate ad valorem as other property is taxed. Esmeralda County v. Mineral County, 37 Nev. 180, 141 Pac. 73 (1914)

Attorney General's Opinions.

Constitutional definition of "net proceeds" compared. Term "net proceeds" in mining, as used in Nev. Art. 10, § 1, is identical with that defined by RL § 3687 (cf. NRS 362.140). AGO 147 (1-25-1918)

No deduction for federal taxes permitted in calculating net proceeds. No reduction from gross proceeds of mines in order to arrive at net proceeds for purpose of taxation may be made except those provided for by RL § 3687 (cf. NRS 362.120), and federal taxes are not within deductions of such statute and may not be deducted in arriving at net proceeds. AGO 147 (1-25-1918)

Lessee and each sublessee of mining ground each required to pay tax. Where lessee of mining ground subleases, original lease and each sublease thereunder should be treated as separate mining unit for net proceeds tax, and lessee and each sublessee is required to file statement provided for under RL § 3690 (cf. NRS 362.110) and pay tax provided for under RL § 3687 (cf. NRS 362.140). AGO 83 (8-21-1923)

"Mine" and "mining claim" include "tailings." Words "mine" and "mining claim," as used in revenue laws of Nevada, are broad enough to include word "tailings" without express mention thereof. AGO 178 (6-25-1935)

Cancellation payment made under mining contract not taxable as net proceeds. Cancellation payment, for total unfilled production, made by Federal Government under mining contract, does not represent return for ore produced from the mine, net proceeds of mines, or production from mine as defined under Nevada law, and is, therefore, not taxable as net proceeds. AGO 173 (11-4-1944)

362.150 Liens for taxes on proceeds of minerals. Every tax levied under the authority or provisions of NRS 362.100 to 362.240, inclusive, on the proceeds of minerals extracted is hereby made a lien on the mines from

which minerals are extracted for sale or reduction, and also on all machinery, fixtures, equipment and stockpiles of the taxpayer located at the mine site or elsewhere in the state. The lien attaches on the 1st day of January of each year, for the calendar year commencing on that day and may not be removed or satisfied until the taxes are all paid, or the title to those mines has vested absolutely in a purchaser under a sale for those taxes.

[76:99:1891; C § 1148; RL § 3688; NCL § 6482]—(NRS A 1979, 822; 1989, 39)

—ANNOTATIONS—

Reviser's Note.

This section was completely revised. The source section (NCL § 6482) was declared by the attorney general to be effective as a declaration of lien. See AGO 238 (11-1-1945). However, the attorney general did not state the time when the lien attaches. The reviser inserted "January" and "July" as the months in which the lien attaches. This conforms to the assessment periods. See NRS 362.110.

Nevada Cases.

Statute of limitations. Former statutes, cf. NRS 362.150, which provided that every tax levied upon proceeds of mine was lien upon mine until paid neither excepted action to collect tax from operation of statute of limitations nor extended time for bringing such action beyond period of statute, whether action was against defendant as individual or against his property. State v. Yellow Jacket Silver Mining Co., 14 Nev. 220 (1879)

Federal and Other Cases.

Section not invalid as creating lien upon, or imposing tax against, property of United States. Sec. 6, ch. 35, Stats. 1871 (cf. NRS 362.150), creating lien on mines or mining claims for taxes, is not invalid as tax upon, or lien against, property of United States because it distinguishes between patented and unpatented claims, lien attaching in first case to mine itself, in second only to possessory right of miner which may be transferred in any manner without infringing title of United States. Tax upon net proceeds itself, imposed by sec. 2, ch. 35, Stats. 1871 (cf. NRS 362.120), is tax upon ore as personal property of miner, not real property of United States. Forbes v. Gracey, 94 U.S. 762, 24 L. Ed. 313 (1877)

362.160 When tax or estimated payment becomes delinquent; collection of delinquencies. If the amount of any tax or estimated payment required by NRS 362.100 to 362.240, inclusive, is not paid within 30 days after it is due, it is delinquent and must be collected as other delinquent taxes are collected by law, together with the penalties provided for the collection of delinquent taxes.

[5:77:1927; NCL § 6582]—(NRS A 1975, 1678; 1987, 169; 1989, 39)

—ANNOTATIONS—

Nevada Cases.

Only district attorney is authorized to commence action for delinquent taxes. Where district attorney and counsel associated with him in action for delinquent property taxes and penalties consented to judgment for taxes without penalties, consent of associated counsel could add nothing to consent of district attorney, because under B §§ 3153 and 3231 (cf. NRS 361.650 and 362.160), district attorneys alone are authorized to commence actions for delinquent taxes. State v. California Mining Co., 15 Nev. 234 (1880), cited, State v. California Mining Co., 15 Nev. 259 (1880), State v. California Mining Co., 15 Nev. 308, at 310 (1880)

Attorney General's Opinions.

Penalties referred to in section are those provided for collection of delinquent prop-

erty taxes generally. Where net proceeds of mines are taxed at same ad valorem rate as other property, penalties referred to in NRS 362.160 in connection with collection of delinquent taxes are penalties imposed by NRS 361.483 for collection of delinquent property taxes generally, because former NRS 362.220 provides that all nonconflicting laws relating to collection, enforcement and penalties for nonpayment of taxes shall apply, impliedly in absence of any specific penalty provision in NRS ch. 362. AGO 508 (5-8-1968)

362.170 Appropriation to county of amount of tax attributable to extractive operations in county; apportionment by county treasurer; department to report amount received as tax upon net proceeds of geothermal resources.

1. There is hereby appropriated to each county the total of the amounts obtained by multiplying, for each extractive operation situated within the county, the net proceeds of that operation by the combined rate of tax ad valorem, excluding any rate levied by the State of Nevada, for property at that site. The department shall report to the state controller for distribution on August 1 of each year the amount appropriated to each county, as calculated for each operation from the final statement made in February of that year for the preceding calendar year.

2. The county treasurer shall apportion to each local government or other local entity, the total of the amounts obtained by multiplying, for each extractive operation situated within its jurisdiction, the net proceeds of that operation, including royalty payments, by the rate levied on behalf of that local government or other local entity, less a percentage commission of 3 percent which must be deposited in the county general fund. The amounts apportioned pursuant to this subsection, including the amount retained by the county and excluding the percentage commission, must be applied to the uses for which each levy was authorized in the same proportion as the rate of each levy bears to the total rate.

3. The department shall report to the state controller on August 1 of each year the amount received as tax upon the net proceeds of geothermal resources which equals the product of those net proceeds multiplied by the rate of tax levied ad valorem by the State of Nevada.

[Part 1:57:1885; BH § 2386; C § 1241; RL § 1581; NCL § 2062]—(NRS A 1959, 761; 1989, 39, 1538)

—ANNOTATIONS—

Attorney General's Opinions.

No commission for collection of certain special levies or license fees. Commissions allowed to counties for collection of taxes pursuant to RL § 1581 (cf. NRS 361.530 and 362.170) are not authorized for collection of special levies imposed by regulatory or inspection measures or license fee collections. AGO 269 (6-23-1927)

Section not in conflict with prohibition against tax collector or county treasurer receiving fee for collecting money of public schools. NRS 361.530, which requires county assessor to reserve and pay to county treasury percentage commission on taxes collected on personal property, and NRS 362.170, which requires assessor to reserve and pay such commission on taxes collected on net proceeds of mines, are not in conflict with NRS 387.225, which prohibits tax collector or county treasurer from receiving fees for collecting,

receiving or keeping public schools' money, because collection of commission is for benefit of general fund and does not reward collector by adding to regular compensation. ACO 409 (5-23-1967)

362.172 Permanent net proceeds fund: Creation; sources of revenue.

1. The permanent net proceeds fund is hereby created as a trust fund. No portion of the principal of the fund may be removed except by direct legislative appropriation. Any such appropriation must receive the votes of a two-thirds majority of each house of the legislature.

2. On or before August 15 of each year, the state controller shall deposit in the fund 5 percent of the portion of the revenue from the tax on the net proceeds of minerals that is remaining after the appropriation made by NRS 362.170.

3. On or before August 15 of each odd-numbered year, the state controller shall transfer to the fund any revenue from the tax on the net proceeds of minerals received during the 2 previous fiscal years which, after subtracting the amount deposited pursuant to subsection 2 and the amount appropriated pursuant to NRS 362.170 for both fiscal years, exceeds $55,000,000.

(Added to NRS by 1989, 1536)

362.175 Procedure for removal of amount of tax and name from records of department when tax impossible or impractical to collect.

1. If at any time, in the opinion of the executive director, it becomes impossible or impractical to collect any tax certified on the proceeds of minerals extracted, the executive director may apply to the Nevada tax commission to have the amount of the tax and the name of the person against whom the tax is certified removed from the tax records of the department.

2. If the Nevada tax commission approves the application, the department may remove the name and amount from its tax records.

(Added to NRS by 1960, 84; A 1975, 1678; 1989, 40)

362.180 Burden of proof on taxpayer to show certification by department to be unjust, improper or invalid. In any suit arising concerning the certification and taxation of the net proceeds of minerals extracted, the burden of proof is upon the taxpayer to show if he so alleges or contends that the certification by the department is unjust, improper or otherwise invalid.

[Part 13:177:1917; 1919 RL p. 3202; NCL § 6554] + [6:77:1927; NCL § 6583]—(NRS A 1975, 1678; 1977, 1052; 1989, 40)

362.200 Powers of department: Examination of records; hearings.

1. The department may examine the records of any person operating or receiving royalties from any extractive operation in this state. The records are subject to examination at all times by the department or its authorized agents and must remain available for examination for a period of 4 years from the date of any entry therein.

2. If any person whose gross yield from an extractive operation as reported to the department for any annual reporting period during the 4 years immediately preceding the examination was $100,000 or more keeps his books and records pertaining to that operation or royalties outside this state, the person shall pay an amount per day equal to the amount set by law for out-of-state travel for each day or fraction thereof during which an examiner is actually engaged in examining the books, plus the actual expenses of that examiner during the time he is absent from Carson City, Nevada, for the purpose of making the examination, but the time must not exceed 1 day going to and 1 day coming from the place of examination. No more than one examination may be charged against a person in any 1 fiscal year.

3. The department may hold hearings and summon and subpena witnesses to appear and testify upon any subject material to the determination of the net proceeds of minerals extracted. The hearings may be held at any place the department designates, after not less than 10 days' notice of the time and place of the hearing given in writing to the owner or operator of the mine. The owner or operator is entitled, on request made to the executive director, to the issuance of the department's subpena requiring witnesses in behalf of the owner or operator to appear and testify at such hearing.

4. The failure of a witness to obey the subpena of the department subjects the witness to the same penalties prescribed by law for failure to obey a subpena of a district court.

[9:77:1927; NCL § 6586]—(NRS A 1975, 318, 1679; 1977, 1052; 1985, 1438; 1989, 40)

—ANNOTATIONS—

Attorney General's Opinions.

Reassessment limited to period of 3 years. Although tax commission, under NCL § 6586 (cf. NRS 362.200), may examine records of mining companies at any time, any reassessment thereunder is limited to period of 3 years under NCL § 8524 (cf. NRS 11.190) and NCL § 8528 (cf. NRS 11.255). AGO 115 (3-1-1944)

Records of person who contracts with mine owner may be examined to verify accuracy of statement filed by owner. Under provisions of NRS 362.200, relating to powers of Nevada tax commission, commission may examine records of contractor who mines and stockpiles ore for mine owner to verify allegations of operating costs contained in mine owner's statement filed under NRS 362.110, relating to statements to be filed with Nevada tax commission by mine operators. AGO 147 (3-22-1960)

362.230 Penalty for failure to file statements.

1. Every person extracting any mineral in this state, or receiving a royalty in connection therewith, who fails to file with the department the statements provided for in NRS 362.100 to 362.240, inclusive, during the time and in the manner provided for in NRS 362.100 to 362.240, inclusive, shall pay a penalty of not more than 10 percent of the amount of the tax due or $5,000, whichever is less. If any such person fails to file the statement, the department may ascertain and certify the net proceeds of the minerals extracted or the value of the royalty from all data and information obtainable, and the

amount of the tax due must be computed on the basis of the amount due so ascertained and certified.

2. The executive director shall determine the amount of the penalty. This penalty becomes a debt due the State of Nevada and, upon collection, must be deposited in the state treasury to the credit of the state general fund.

3. Any person extracting any mineral or receiving a royalty may appeal from the imposition of penalty and interest to the Nevada tax commission by filing a notice of appeal within 30 days after the decision of the executive director.

[7:77:1927; NCL § 6584]—(NRS A 1971, 563; 1973, 1296; 1975, 135, 1679; 1989, 41)

—ANNOTATIONS—

Attorney General's Opinions.

Assessment made after failure to file proper statement may be rescinded. Where, owing to failure of mine operator to file proper gross yield and net proceeds statement under NRS 362.110, Nevada tax commission levied arbitrary assessment under NRS 362.230, and where amended statement for period revealed net loss, commission had authority to rescind such assessment. AGO 465 (11-28-1967)

Nature of penalty provided by section. Where taxpayer does not file reports required by NRS 362.110 and penalty is imposed thereunder pursuant to NRS 362.230, such penalty is paid to state because it is intended to defray cost of obtaining information required in reports and is not penalty for nonpayment of taxes, which would be additional tax, distributable to county and state. AGO 495 (3-13-1968)

362.240 Penalty for false statements. Any person who verifies under oath to the truthfulness of a statement required by NRS 362.100 to 362.240, inclusive, that is false in any material respect shall be liable to a penalty of not more than 15 percent of the tax as determined by the executive director after reasonable notice and hearing.

[8:77:1927; NCL § 6585]—(NRS A 1975, 1580)

CHAPTER 362

TAXES ON PATENTED MINES AND PROCEEDS OF MINERALS

PROCEEDS OF MINERALS

General Provisions

Accelerated Depreciation of Capitalized Costs

PATENTED MINES

PROCEEDS OF MINERALS

General Provisions

362.010 Method for determining gross value of mineral products.

1. For the purposes of assessment and taxation of the net proceeds of mines under chapter 362 of NRS, the gross value of mineral products must be determined in accordance with the provisions of this section.

2. In those cases where a mineral product is sold by the producer in an arms-length transaction in free market competition, the gross value of the product is an amount equal to the proceeds of the sale of the product. This subsection applies to sales realized on all minerals produced from mining, including without limitation, reduction, beneficiation or any treatment used by the producer within or outside this state to obtain a mineral product which is commercially marketable.

3. In those cases where a product is exchanged for any thing or service or removed from the state in a form ready for use or sale, but not used or sold during the period covered by the statement, the gross value of the product is:

(a) The price stated in the contract or other document of sale if one is in existence; or

(b) An amount determined by the department by using a recognized national or international publication of prices.

4. In those cases where the mineral product is used by the producer or disposed of by him in any kind of transaction which is not at arms-length, including without limitation such transactions with associated or affiliated companies, the gross value of the mineral product so used or disposed of will be determined by the department by utilizing information supplied by the producer under this subsection and from such other appropriate sources as the department deems necessary. The mineral producer shall supply the department with the following information for each reporting period:

(a) The producer's profit and loss statements;

(b) The proportionate profit reports and the calculations used to prepare them;

(c) The allocation of income by states;

(d) The amount used to calculate the percentage of depletion allowances; or

(e) The monthly average price of the product for the months in which it was used in a manufacturing process or to provide a service.

5. Any information submitted pursuant to paragraphs (a) to (d), inclusive, of subsection 4 must be the same as submitted to the Internal Revenue Service.

6. The producer has the burden of proof in any determination under this section of the gross value of mineral products used or disposed of by him.

[Tax Comm'n, Mine Proceeds Reg. No. 26, eff. 1-24-78; renumbered as Reg. No. 1, 1-22-79]--(NAC A 5-3-84)

362.015 Method for determining gross value of geothermal resources.

1. As used in this section "transaction" means a bona fide transaction conducted at arms length involving geothermal resources at the wellhead.

2. To assess and tax the net proceeds of an operating mine which extracts geothermal resources for a profit, the gross value of the geothermal resources must be determined pursuant to this section.

3. To determine the gross value of geothermal resources, the transaction must first be identified.

4. If the transaction involves the sale of the geothermal resource, the gross value of the geothermal resource equals the proceeds of the sale.

5. If the transaction involves the sale of electricity, the gross value of the geothermal resource used to produce the electricity is determined by one of the following methods:

(a) If the transaction consists of an agreement between the developer of the field and the developer of the generating plant, the gross value of the geothermal resource is the negotiated share of the gross value of the electrical energy sold less the negotiated costs for the operation, maintenance and replacement of the generating plant which are paid by the developer of the field plus any negotiated costs for the operation, maintenance and replacement of the field which are paid by the developer of the generating plant. These costs include, but are not limited to:

(1) A negotiated sharing by percentage of the operating and maintenance costs of the field and the generating plant.

(2) A negotiated agreement that the developer of the field will pay for necessary improvement to the generating plant.

(b) If there is not a transaction establishing the value of the geothermal resource, the gross value of the geothermal resource is determined by deducting a transportation allowance and a generating allowance. For the purposes of this paragraph:

(1) The transportation allowance is allowed if the developer of the field must install or pay, in part or in total, for a transmission line to deliver electricity to the utility, and includes:

(I) The annual total cost of operating and maintaining the transmission line including direct wages, benefits, supplies, materials and charges for overhead;

(II) Except as otherwise provided by NAC 362.100 to 362.160, inclusive, the depreciation of the capital investment in the transmission line using the straight-line method; and

(III) An allowance for return on the investment in the transmission line, calculated by multiplying the undepreciated investment in the transmission line by the overall rate of return on capital which is authorized by the public service commission of Nevada at the time of investment.

If a developer of a generating plant is involved in the transmission or sale of electricity, wheeling charges and losses of energy along the transmission line are legitimate deductions from the gross sales of electrical energy.

(2) The generating allowance is the cost of converting the geothermal resource into electricity and includes but is not limited to:

(I) The annual total cost of operating and maintaining the generating plant including wages, benefits, repairs, supplies, materials and charges for overhead;

(II) Except as otherwise provided by NAC 362.100 to 362.160, inclusive, the depreciation of the capital investment in the generating plant using the straight-line method; and

(III) An allowance for return on the investment in the generating plant, calculated by multiplying the undepreciated investment in the generating plant by the overall rate of return on capital which is authorized by the public service commission of Nevada at the time of investment.

To determine the generating allowance, the investment in the generating plant must generally include all facilities from production at the wellhead to the disposal of the spent brine.

(Added to NAC by Tax Comm'n, eff. 10-9-87; A 9-13-91)

362.020 Separate report of royalties. All royalties received by a lessor must be reported separately from other receipts.

[Tax Comm'n, Mine Proceeds Reg. No. 21, eff. 6-28-65; A and renumbered as Reg. No. 6, 1-22-79]

362.030 Deductions: Capitalized costs.

1. All information in the statement which is required by NRS 362.110 to be filed must be submitted on forms supplied by the department or in a manner which is acceptable to the department.

2. The following property must be reported:

(a) Leasehold improvements and buildings;

(b) Fixed machinery and equipment;

(c) Mobile machinery and equipment; and

(d) Automobiles and light service vehicles such as pickups and panel trucks.

3. Each cost submitted for depreciation must be the complete cost to the taxpayer, including all delivery and installation charges.

4. Each asset must be listed on a table which sets forth:

(a) A clear identification of the asset;

(b) The cost of its construction or acquisition and the date;

(c) The depreciation class, such as buildings, fixed equipment, mobile machinery and equipment or automobile and light service vehicles;

(d) The total amount of depreciation granted; and

(e) The amount claimed for the present tax period. An integrated processing assembly which consists of components of individual manufacture, and which is installed as a unit, may be reported as a unit. The report must describe the function of the unit and list its principal components in detail.

[Tax Comm'n, Mine Proceeds Reg. No. 3 § 1, eff. 8-6-80]

362.040 Deductions: Depreciation of capitalized costs.

1. Except as otherwise provided by NAC 362.100 to 362.160, inclusive, leasehold improvements and buildings must be depreciated over a 20-year period using the straight-line method.

2. Except as otherwise provided by NAC 362.100 to 362.160, inclusive, fixed machinery and equipment must be depreciated over a 20-year period using the straight-line method.

3. Mobile machinery and equipment must be depreciated over a 10-year period using the straight-line method.

4. Automobiles and light service vehicles must be depreciated over a 5-year period using the straight-line method.

5. Except as otherwise provided by NAC 362.100 to 362.160, inclusive, an integrated processing assembly must be depreciated over a 20-year period using

the straight-line method. Subsequent additions to the unit must also be reported and be depreciated over a 20-year period using the straight-line method.

6. Depreciation of assets on hand as of January 1, 1980, must be calculated at the rate of 2.1 percent per year for the years ending before January 1, 1975, plus the depreciation allowance granted by the department for the period between January 1, 1975, and January 1, 1980. The total depreciation thus calculated must be deducted from the acquisition cost and is the basis for continuing depreciation according to the classification of the asset.

7. If any property is disposed of before the end of the depreciation period, the remaining amount of allowable depreciation, if the property had remained in use, may be reported in total as an additional expense of depreciation for the reporting period. The amount of depreciation must be reduced by the amount of any consideration received for the property from sale, insurance recovery, trade-in, or any other reimbursement, but not below zero.

8. A mining operator may petition the Nevada tax commission for reconsideration of the allowable depreciation of property. The commission may adjust the allowable depreciation if the petitioner presents satisfactory evidence that the expected life of the property is longer than that which is provided for in this section. If the commission finds that the petitioner has presented satisfactory evidence that the expected life of the property is shorter than that which is provided for in this section, the petitioner must comply with the provisions of NAC 362.100 to 362.160, inclusive, to apply for permission to depreciate the property in the accelerated manner prescribed by NAC 362.140.

[Tax Comm'n, Mine Proceeds Reg. No. 3 § 2, eff. 8-6-80]--(NAC A 9-13-91)

362.050 Deductions: Operating costs.

1. In computing the costs enumerated in subsection 3 of NRS 362.120, the following specific items are deductible except as limited by subsection 5 of NRS 362.120:

(a) The cost of renting equipment if the amount paid as rental is commercially reasonable in the circumstances;

(b) The cost of contracting for all or part of the mine's operations, if the contract price is commercially reasonable in the circumstances;

(c) The cost of services which a Nevada mine receives under contract from its corporate office or the office of a related corporation, if:

(1) The cost is commercially reasonable in the circumstances; and

(2) The cost is separately stated in a manner consistent with good accounting practices; and

(d) The reasonable cost of management provided to a joint venture by a member, if the fees relate directly to operation of the mine.

2. In computing the costs enumerated in subsection 3 of NRS 362.120, the following specific items are not deductible:

(a) Cost or expenses which are capitalized;

(b) Gifts, grants and donations;

(c) Costs of public relations and influencing or seeking to influence governmental activities;

(d) Costs of exploration and development related to ore bodies outside the geographic area which can economically provide a source of raw materials to the plant located at the mine; and

(e) Federal income taxes, all property taxes and the tax on net proceeds of mines.

3. If a cost is partially deductible and partially nondeductible, the deductible portion must be allowed. In determining the portion of such costs which is allowable as a deduction, a reasonable allocation must be made based upon available information.

[Tax Comm'n, Mine Proceeds Reg. Nos. 1-7, 9-14, 19, 20 & 25, eff. 6-28-65; A and renumbered as Reg. No. 2, 1-22-79]--(NAC A 5-3-84)

362.060 Deductions: Electric power.

1. The installation of power and light lines is a capital charge, while the upkeep and purchase costs of electric power is an operating cost.

2. When electric power is generated and distributed to various departments, the upkeep of the power plant must be written off, and the distribution of the power is an operating cost. New engines, boilers and similar equipment are chargeable to a capital account.

[Tax Comm'n, Mine Proceeds Reg. No. 8, eff. 6-8-65; A and renumbered as Reg. No. 4, 1-22-79]

362.070 Deductions: Loading and transportation costs. The actual cost of transporting the product of the mine to the place of reduction, refining and sale, is affected directly by both demurrage charged and dispatch earned credits. These charges and credits become a part of the cost of loading and unloading ore. Additional assessments for demurrage penalties incurred for any cause increases the cost of loading and transportation; dispatch earned credit paid for efficiency in loading or unloading vessels or other transport equipment directly reduces the cost of transportation. The actual cost of loading is the gross cost less any dispatch earned credits plus any demurrage.

[Tax Comm'n, Mine Proceeds Reg. No. 26, eff. 4-24-69; renumbered as Reg. No. 15, 11-9-78; A and renumbered as Reg. No. 5, 1-22-79]

Accelerated Depreciation of Capitalized Costs

362.100 Eligibility of mining operator for accelerated depreciation.

1. A mining operator may petition the Nevada tax commission for permission to depreciate leasehold improvements, buildings, fixed machinery and fixed equipment in the accelerated manner prescribed in NAC 362.140 if the mining operator has:

(a) Complied with all applicable provisions of chapter 519A of NRS and the regulations adopted pursuant thereto;

(b) Agreed in writing to extend the time allowed for the department to file a certificate of delinquency pursuant to NRS 360.420 to the date on which the department completes a final audit; and

(c) Given public notice that the mining operation will close within 36 months after the date on which the petition is filed with the commission.

2. The public notice must set forth one or more reasons for the closure and the date on which the closure is expected. The notice must be delivered personally or sent by certified mail to the county commissioners of the county

in which the mining operation is located and to the budget division of the department of administration and:

(a) If the mining company is publicly held, appear in the annual reports which the company is required to provide to the Securities and Exchange Commission and which it provides to its stockholders; or

(b) If the mining company is not publicly held, be sent to all creditors whose money financed the assets for which the company is seeking permission to use the accelerated depreciation method.

(Added to NAC by Tax Comm'n, eff. 9-13-91)

362.110 Filing of petition and accompanying documents. A petition to depreciate leasehold improvements, buildings, fixed machinery and fixed equipment in the accelerated manner prescribed in NAC 362.140 must:

1. Be filed with and approved by the Nevada tax commission before the date on which the mining operator is required to file the annual statement required by NRS 362.110.

2. Be accompanied by a copy of each public notice which was sent pursuant to NAC 362.100.

3. Be accompanied by a copy of the plan for reclamation filed with the division of environmental protection of the state department of conservation and natural resources.

4. If the mining operator filed a plan of operation with the division of environmental protection of the state department of conservation and natural resources, be accompanied by the plan.

5. Be accompanied by:

(a) A notarized statement which is signed by an officer of the company; or

(b) A copy of the plan for productive use of the land after the mining has stopped,

setting forth the proposed disposition of the leasehold improvements, buildings, fixed machinery and fixed equipment.

(Added to NAC by Tax Comm'n, eff. 9-13-91)

362.120 Temporary closure not acceptable justification for allowance of petition. The Nevada tax commission will not accept closure of a mining operation because of a temporary change in economic conditions or any other closure of a mining operation which the commission determines to be temporary as the justification for allowing a petition to depreciate leasehold improvements, buildings, fixed machinery and fixed equipment in the accelerated manner prescribed in NAC 362.140.

(Added to NAC by Tax Comm'n, eff. 9-13-91)

362.130 Permission to depreciate assets granted to specific company only. Permission to depreciate assets in the accelerated manner prescribed in NAC 362.140 must be granted to a specific mining company and does not follow any transfer of the assets. For the purposes of this section, a subsidiary or affiliate of a mining company is a separate company.

(Added to NAC by Tax Comm'n, eff. 9-13-91)

362.140 Manner of depreciation.

1. If the Nevada tax commission grants a petition, the leasehold improvements, buildings, fixed machinery and fixed equipment must be depreciated at the following rates:

Year	Percentage
1	10
2	20
3	30
4	40

2. The amount of the remaining depreciation allowed for the asset, less any salvage value not previously subtracted, must be multiplied annually by the allowed percentage beginning on the date on which the first annual statement required by NRS 362.110 is filed after the date on which the petition is granted. The percentage which must be used for the first year of accelerated depreciation is 10 percent whether or not the remaining useful life of the asset is 36 months. If the mining operator acquires leasehold improvements, buildings, fixed machinery or fixed equipment after the petition is granted, such assets must be depreciated in the same manner as the existing assets using 10 percent for the first year of depreciation.

3. The salvage value of an asset must be calculated on the basis of the projected value of the asset at the time of the anticipated disposition. If excess depreciation is taken because a mining operator underestimated the salvage value of an asset, penalties and interest pursuant to NRS 360.417 must be applied to any underpayment of tax resulting therefrom.

4. The mining operator shall credit the decrease in tax liability resulting from the accelerated depreciation against the estimates or final taxes due pursuant to NRS 362.115.

(Added to NAC by Tax Comm'n, eff. 9-13-91)

362.150 Annual audits by departments; requirement of surety.

1. The department may conduct annual audits of any mining operation that is allowed to depreciate its assets in the accelerated manner prescribed in NAC 362.140.

2. If the department determines that it is possible that the mining operator will continue to process, sell or stockpile the mined product for longer than the agreed time, the department shall require the mining operator to file a surety with the department. The surety must be:

(a) Executed by the mining operator as principal and by a corporation qualified under the laws of this state as surety;

(b) Payable to the State of Nevada;

(c) A bond, letter of credit or any other form of security authorized by NRS 100.065; and

(d) Conditioned upon the punctual payment of all taxes on the net proceeds of mines, including all penalties and interest.

MINING PROPERTY AND NET PROCEEDS OF MINES QUESTIONNAIRE

It is requested that you answer all questions listed below in order for us to determine hether or not you are liable for filing the net proceeds of mines reports and/or the affidavit for reporting mining and milling property in Nevada.

1. Mine operator. (Name and address) _____

   _____

   (A) Date acquired: _____ (b) Previous mine owner: _____

2. Mine owner. (Name and address) _____

   _____

3. Name of mine: _____ County: _____

   Section: _____ Township: _____ Range: _____

4. (A) Number of improvements at the site: _____

   (B) Estimated cost of equipment owned and leased: Fixed equipment: $_____

   Mobile equipment: $_____ Other: _____

5. (A) Products that are or will be produced: _____

   (B) Number of employees: _____

6. Present status of operations (please use dates of start or suspension.)

   Producing: _____ Exploration: _____

   Developing: _____ Idle: _____

7. If developing or exploring, when do you expect to start production: _____

8. Were there any sales of the mine product by the above operator? _____

   When? _____

9. Are you making or receiving royalty or other type payments? ( ) Yes ( ) No

   If yes, give name and address. (Use separate schedule if necessary.) _____

   _____

10. Location of records for net proceeds of mines tax audit purposes. _____

    _____

11. Submitted by: _____

    Name and Title

    _____ _____

    Signeture Date

    _____

    Address if different from well operator (1.) Telephone

NOTE: Submit a separate questionneire for each mine in each county.

MNG 18

04/24/87

009.RRR

2 ORIGINALS

2 SETS OF LABELS
A. Mailing Label
Address only
B. Address Label
with Re line

STATE OF NEVADA
DEPARTMENT OF TAXATION
Capitol Complex
Carson City, Nevada 89710-0003
Telephone (702) 687-4892
In-State Toll Free 800-992-0900
Fax (702) 687-5981

BOB MILLER
Governor

JOHN P. COMEAUX
Executive Director

December 27, 1991

!INCAREOF!
!NAME!
!ADDRESS!
!CITY!, !STATE! !ZIP!

Re: !COUNTY!
!MINENAME!

Dear Taxpayer:

Enclosed is the form for reporting gross production and allowable deductions to determine the net proceeds of your company for the calendar year ended December 31, 1991. Unless an extension of time, in writing, is requested and granted, please complete the form in detail and return it to this office on or before February 15, 1992.

Please note that on the form, the line item "other costs" will not be considered a deduction from gross unless it is itemized in detail. Further, in filling out the line items in each Category 1 through 5, attach a detailed accounting for each expense in each category. The Department needs a detailed accounting of all expenses to be able to make a determination of what expenses may be allowable or disallowable.

If the enclosed form is not completed in detail as required or in the format thereon, the Department will return it to you or require detailed clarification.

If you will be reporting any new royalty recipients that the Department may not be aware of, please inform them of their responsibility under NRS 362.

Should you have any questions concerning the form please contact Jack Raible at 702-687-6609 or David Adams at 702-687-6608.

Sincerely,

Dino DiCianno, Supervisor
Centrally Assessed Properties

DDC:JR/law

Enclosure

DEPARTMENT OF TAXATION - CAPITOL COMPLEX - CARSON CITY, NEVADA 89710-0003

NET PROCEEDS OF MINERALS

STATEMENT OF GROSS PRODUCTION, LAWFUL DEDUCTIONS AND CLAIMED NET PROCEEDS

Calendar Year Ended: December 31, 1991

Must be filed by February 15, 1992

_____

Please correct above information where necessary

Gross value of mined product:

_____ ounces, pounds or tons sold $_____

_____ ounces, pounds or tons sold $_____

_____ ounces, pounds or tons sold $_____

_____ ounces, pounds or tons sold $_____

TOTAL GROSS VALUE $_____

Allowable deductions

a. Expenses from 1 - 6 below $_____

b. Allowable depreciation (Detail on reverse) $_____

TOTAL ALLOWABLE DEDUCTIONS $_____

NET PROCEEDS OR (LOSS) $_____

_____ ounces, pound or tons produced but not sold $_____

I hereby certify that this is a full and true statement of the amount of value of ore extracted by said company for the period above indicated; that the deductions from said gross yield are the actual costs incurred during that period, and none other.

Date: _____ Signed and Title: _____

Detail of expenses (deductions) set forth in NRS 362.120. Attach schedule if necessary.

NOTE: ALL EXPENSES CLAIMED MUST BE IDENTIFIABLE IN COMPANY BOOKS OR RECORDS. NRS 362.120 REFERS TO DEDUCTIONS IN TERMS OF "ACTUAL COSTS." IF YOU ARE NOT REPORTING ACTUAL COSTS, SPECIFY FORMULA OR METHOD IN USE. *COSTS WILL NOT BE CONSIDERED UNLESS ITEMIZED.

1. COST OF EXTRACTING ORE OR DEPOSIT:

(a) direct labor . . . . . $_____

(b) supplies, materials. . . $_____

(c) fuel, power, light . . . $_____

(d) repair and maintenance . $_____

*(e) other costs (itemize). . $_____

TOTAL EXTRACTING. . . . . $_____

2. COST OF TRANSPORTING CRUDE ORE TO MILL:

(a) direct labor . . . . . $_____

(b) supplies, materials. . . $_____

(c) fuel, power, light . . . $_____

*(d) other costs (itemize). . $_____

TOTAL TRANSPORTING. . . . . $_____

3. COST OF MARKETING: Mined Product Only

(a) freight and express. . . $_____

(b) commissions. . . . . $_____

TOTAL MARKETING . . . . . $_____

4. COST OF REDUCTION AND REFINING:

(a) direct labor . . . . . $_____

(b) supplies, materials. . . $_____

(c) fuel, power, light . . . $_____

(d) repair and maintenance . $_____

*(e) other costs (itemize) $_____

TOTAL REDUCTION AND REFINING. $_____

5. COST OF INSURANCE:

(a) fire insurance only . $_____

(b) Nevada industrial. . . $_____

(c) Nevada unemployment. . $_____

(d) social security. . . . $_____

(e) pension, retirement. . $_____

(f) group health and accident insurance . . $_____

*(g) other (itemize). . . . $_____

TOTAL INSURANCE . . . . . $_____

6. PRODUCTION ROYALTIES INCURRED:

Name and Address	Amount
_____	$_____
_____	$_____
_____	$_____
_____	$_____
_____	$_____
_____	$_____

TOTAL ROYALTY . . . . . $_____

TOTAL LINES 1 THROUGH 6 $_____

NNG 21A

12-06-91

7. DEPRECIATION

DEPRECIATION CLASSES:

A. LEASEHOLD IMPROVEMENTS OR BUILDINGS - [illegible]0 YEAR LIFE;
B. FIXED MACHINERY AND EQUIPMENT - 20 YEAR LIFE;
C. MOBILE MACHINERY AND EQUIPMENT - 10 YEAR LIFE;
D. AUTOMOBILES AND LIGHT SERVICE VEHICLES - 5 YEAR LIFE.

1991 ADDITIONS

CLASS	IDENTIFICATION	-A- ORIGINAL COST INSTALLED

1991 DELETIONS

CLASS	IDENTIFICATION	YEAR ORIGINALLY ACQUIRED	(B) ADJUSTED ACQUISITION COST		(C) DEPRECIATION ALLOWED FROM 1980		(D) CONSIDERATION FOR SALE TRADE-IN INSURANCE, ETC		(E) REMAINING VALUE TO BE CLAIMED IN 1991
			$	minus	$	minus	$	=	$
			$	minus	$	minus	$	=	$
			$	minus	$	minus	$	=	$
			$	minus	$	minus	$	=	$
			$	minus	$	minus	$	=	$
			$	minus	$	minus	$	=	$
			$	minus	$	minus	$	=	$
			$	minus	$	minus	$	=	$
			$	minus	$	minus	$	=	$
			$	minus	$	minus	$	=	$
			$	minus	$	minus	$	=	$
			$	minus	$	minus	$	=	$
			$	minus	$	minus	$	=	$
			$	minus	$	minus	$	=	$
			$	minus	$	minus	$	=	$
			$	minus	$	minus	$	=	$
			$	minus	$	minus	$	=	$
			$	minus	$	minus	$	=	$
			$	minus	$	minus	$	=	$
			$	minus	$	minus	$	=	$
			$	minus	$	minus	$	=	$
			$	minus	$	minus	$	=	$

	TOTAL ADJUSTED ACQUISITION COST FROM PREVIOUS NET PROCEEDS OF MINES REPORT	ADDITIONS FROM COLUMN (A) ABOVE	DELETIONS FROM COLUMN (B) ABOVE	ADJUSTED ACQUISITION COST	PERCENT DEPRECIATION	ALLOWABLE DEPRECIATION
Class "A"	$	plus $	minus $	= $	x .05	= $
Class "B"	$	plus $	minus $	= $	x .05	= $
Class "C"	$	plus $	minus $	= $	x .10	= $
Class "D"	$	plus $	minus $	= $	x .20	= $

1991 Depreciation $________

Plus remaining value of deleted items (total from Column (E) above) $________

TOTAL 1991 allowable depreciation (to Line B on reverse) $________

[illegible]

12-06-91

A:005.RRR

2 ORIGINALS

LABELS

STATE OF NEVADA
DEPARTMENT OF TAXATION
Capitol Complex
Carson City, Nevada 89710-0003
Telephone (702) 687-4892
In-State Toll Free 800-992-0900
Fax (702) 687-5981

BOB MILLER
Governor

JOHN P. COMEAUX
Executive Director

December 27, 1991

!INCAREOF!
!NAME!
!ADDRESS!
!CITY!, !STATE! !ZIP!

Re: !COUNTY!
!MINENAME!

Dear Taxpayer:

Enclosed is the form for reporting production royalties received by you for the calendar year ended December 31, 1991. Report only the payments actually received, by month, in 1991 and indicate from whom the royalties are received.

Unless an extension of time, in writing, is requested and granted, this form must be filed prior to February 15, 1992. Should you have any questions concerning the form please contact Jack Raible at 702-687-6609, or David Adams at 702-687-6608.

Sincerely,

Dino DiCianno, Supervisor
Centrally Assessed Properties

DDC:JR/law

Enclosure

DEPARTMENT OF TAXATION
CAPITOL COMPLEX
CARSON CITY, NEVADA 89710-0003
NET PROCEEDS OF MINERALS, ROYALTIES RECEIVED
CALENDAR YEAR 1991

PURSUANT TO NRS 362.110: STATEMENT MUST BE FILED PRIOR TO FEBRUARY 15, 1992

Re:

(A separate report must be filed for each mine, oil well, or geothermal project)

PLEASE CORRECT ABOVE INFORMATION WHERE NECESSARY

PRODUCTION ROYALTIES RECEIVED FROM:

NAME AND ADDRESS		MONTHLY PRODUCTION ROYALTIES ACTUALLY RECEIVED
_____	01-91	$_____
_____	02-91	$_____
_____	03-91	$_____
_____	04-91	$_____
_____	05-91	$_____
_____	06-91	$_____
_____	07-91	$_____
_____	08-91	$_____
_____	09-91	$_____
_____	10-91	$_____
_____	11-91	$_____
_____	12-91	$_____
TOTAL		$_____

I hereby certify to the best of my knowledge and belief that the foregoing is a full and true statement of total royalties received for the calendar year 1991 for the above-named mine.

_____ _____
Date Signature

A:010.RRR

2 ORIGINALS

LABELS

STATE OF NEVADA
DEPARTMENT OF TAXATION
Capitol Complex
Carson City, Nevada 89710-0003
Telephone (702) 687-4892
In-State Toll Free 800-992-0900
Fax (702) 687-5981

BOB MILLER
Governor

JOHN P. COMEAUX
Executive Director

December 10, 1990

!INCAREOF!
!NAME!
!ADDRESS!
!CITY!, !STATE! !ZIP!

Dear Taxpayer:

This letter is sent to you to clarify any possible misunderstanding about reporting royalty payments received in connection with mining.

NRS 362.010 states in part:

1. "Mine" means an excavation in the earth from which ores, coal or other mineral substances are extracted, or a subterranean natural deposit of minerals located and identified as such by the staking of a claim or other method recognized by law. The term includes a well drilled to extract minerals.

2. "Mineral" includes oil, gas and other hydrocarbons, but does not include sand, gravel or water, except hot water or steam in an operation extracting geothermal resources for profit.

NRS 362.105 states in part:

1. "Royalty" means a portion of the proceeds from extraction of a mineral which is paid for the privilege of extracting the mineral.

2. "Royalties" do not include:

   (a) Rents or other compensatory payments which are fixed and certain in amount and payable periodically over duration of the lease regardless of the extent of extractions; or

   (b) Minimum royalties covering periods when no mineral is extracted if the payments are fixed and certain in amount and payable on a regular period basis.

NRS 362.110 also states in part:

1. Every person extracting any mineral in this state or receiving any royalty:

(a) Shall, on or before February 15 of each year, except as otherwise provided in paragraph (b), file with the department a statement showing the gross yield and claimed net proceeds from each geographically separate operation where a mineral is extracted by that person during the calendar year immediately preceding the year in which the statement is filed.

(b) May have up to 30 additional days to file the statement, if beforehand he makes written application to the department and the department finds good cause for the extension.

The reporting form was designed to reflect royalty payments received each month during the calendar year preceding the report.

Should you have any questions regarding this report, please contact the Department's Mining Section at 702-687-4840.

Sincerely,

Dino DiCianno, Supervisor
Centrally Assessed Properties

DDC:law

A:004.RRR

ENVELOPES

LABELS

STATE OF NEVADA
DEPARTMENT OF TAXATION
Capitol Complex
Carson City, Nevada 89710-0003
Telephone (702) 687-4892
In-State Toll Free 800-992-0900
Fax (702) 687-5981

BOB MILLER
Governor

JOHN P COMEAUX
Executive Director

December 10, 1990

!INCAREOF!
!NAME!
!ADDRESS!
!CITY!, !STATE! !ZIP!

Dear Taxpayer:

The Department is charged with investigating and determining the net proceeds of all operating mines and to assess them as provided in NRS 362.100 to 362.240, inclusive.

NRS 362.110 specifies that:

1. The annual statement must show the gross yield and claimed net proceeds from each geographically separate operation where a mineral is extracted.
2. The statement must show the claimed deductions from the gross yield in the detail set forth in NRS 362.120.
3. Be in the form prescribed by the Department.

NRS 362.120 specifies that the net proceeds are determined by subtracting from the gross yield the following categories of deductions for costs incurred during the reporting period:

Category 1.	Cost of extracting the mineral - including cost of repairs and maintenance.
Category 2.	Cost of transporting the mineral to mill - including cost of repairs and maintenance.
Category 3.	Cost of marketing.
Category 4.	Cost of reduction and refining - including cost of repairs and maintenance.
Category 5.	Cost of insurance.
Category 6.	Production royalties.
Category 7.	Allowable depreciation per regulation of the Nevada Tax Commission.

In addition, other costs will not be considered unless itemized.

004-A.RRR

.NAME!
February 14, 1990
Page 2

Reference is made to reporting letter dated December 21, 1990 in which it states that if the Net Proceeds of Minerals form was not completed in detail as required or in the format thereon, it would be returned to you. The Department has examined your report and has found it to be incomplete for the following reason(s):

_____ Form not filled out.
_____ Expenses combined, not segregated.
_____ Backup data not indexed nor explained.
_____ Expenses not detailed.
_____ Equipment additions or deletions not identified.
_____ Other costs not itemized.
_____ Not in the form prescribed by the Department.

Even though you may have reported total expenses against your gross in the past in a form compatible to your general ledger accounting system, that method of reporting needs to be more detailed to enable the Department's mining appraisers to audit your return.

Please complete the attached copy of your report as required above and submit it to the Department within two weeks of receipt. If the revised report form is not completed properly or not returned within the specified time period, your company will be subject to the penalty provisions of NRS 362.230.

NRS 362.230 specifies that a company who fails to file with the Department the statements provided for in NRS 362.100 to NRS 362.240, inclusive, during the time and in the manner provided for in NRS 362.100 to 362.240, inclusive, shall pay a penalty of not more than 10 percent of the amount of tax due or $5,000, whichever is less.

If you should have any questions concerning the above, please call the Department's Mining Section at 702-687-4840.

Sincerely,

Dino DiCianno, Supervisor
Centrally Assessed Properties

DDC:law

Attachment

A:003.RRR

2 ORIGINALS

LABELS

STATE OF NEVADA
DEPARTMENT OF TAXATION
Capitol Complex
Carson City, Nevada 89710-0003
Telephone (702) 687-4892
In-State Toll Free 800-992-0900
Fax (702) 687-5981

BOB MILLER
Governor

JOHN P. COMEAUX
Executive Director

April 14, 1992

!INCAREOF!
!NAME!
!ADDRESS!
!CITY!, !STATE! !ZIP!

Re: !COUNTY!
!MINENAME!
Taxing District - !DISTRICT!

Dear Taxpayer:

The Department of Taxation wishes to inform you of your reporting responsibilities in regard to estimated payments of the net proceeds tax. All royalty recipients and operators who are required by NRS 362.110 to file an annual net proceeds report are also required to file an estimate for the current calendar year. The estimate must be filed with the Department on or before June 15 of each year. The taxes due on the estimate must be paid to the Department on or before July 15 of each year.

Attached is a form for reporting your estimated net proceeds or royalties for Calendar Year 1992. Please return this form to the Department prior to June 15, 1992. The Department will then calculate your estimated taxes due and send you a bill.

If you fail to file the required statement with the Department by June 15, 1992, the Department will make an estimate based upon all available information. Failure to file the estimate timely will result in a penalty of 10 percent of the taxes due or $5,000, whichever is less. Should you have any questions, please contact the Department's Mining Section; either Jack Raible at 702-687-6609 or David Adams at 702-687-6608.

Sincerely,

Dino DiCianno, Supervisor
Centrally Assessed Properties

DDC:JR/law

Enclosure

018.RRR

2 ORIGINALS

LABELS

STATE OF NEVADA
DEPARTMENT OF TAXATION
Capitol Complex
Carson City, Nevada 89710-0003
Telephone (702) 687-4892
In-State Toll Free 800-992-0900
Fax (702) 687-5981

BOB MILLER
Governor

JOHN P COMEAUX
Executive Director

April 14, 1992

!INCAREOF!
!NAME!
!ADDRESS!
!CITY!, !STATE! !ZIP!

Re: !COUNTY!
!MINENAME!
Taxing District - !DISTRICT!

Operator Report:

1992 Estimated Gross Yield _____

1992 Estimated Net Proceeds _____

_____ _____
Date Signature, Title

NRS 362.115 Statement of estimated gross yield and net proceeds for current calendar year; payment of estimated tax; credit against final certification or refund; quarterly report of actual amounts. In addition to the statement required by subsection 1 of NRS 362.110, each person who is required to file that statement:

1. Shall, on or before June 15 of each year, file with the department a statement showing the estimated gross yield and estimated net proceeds from each such operation for the entire current calendar year, and shall pay the tax upon the net proceeds so estimated to the department on or before July 15 of that year.

015.RRR

STATE OF NEVADA
DEPARTMENT OF TAXATION
Capitol Complex
Carson City, Nevada 89710-0003
Telephone (702) 687-4892
In-State Toll Free 800-992-0900
Fax (702) 687-5981

BOB MILLER
Governor

JOHN P. COMEAUX
Executive Director

April 14, 1992

!INCAREOF!
!NAME!
!ADDRESS!
!CITY!, !STATE! !ZIP!

Re: !COUNTY!
!MINENAME!
Taxing District - !DISTRICT!

Royalty Report:

1992 Estimated Royalties _____

_____ _____
Date Signature

NRS 362.115 Statement of estimated gross yield and net proceeds for current calendar year; payment of estimated tax; credit against final certification or refund; quarterly report of actual amounts. In addition to the statement required by subsection 1 of NRS 362.110, each person who is required to file that statement:

1. Shall, on or before June 15 of each year, file with the department a statement showing the estimated gross yield and estimated net proceeds from each such operation for the entire current calendar year, and shall pay the tax upon the net proceeds so estimated to the department on or before July 15 of that year.

029.RRR

2 ORIGINALS

LABELS

STATE OF NEVADA
DEPARTMENT OF TAXATION
Capitol Complex
Carson City, Nevada 89710-0003
Telephone (702) 687-4892
In-State Toll Free 800-992-0900
Fax (702) 687-5981

BOB MILLER
Governor

JOHN P. COMEAUX
Executive Director

February 18, 1992

!INCAREOF!
!NAME!
!ADDRESS!
!CITY!, !STATE! !ZIP!

Re: !COUNTY!
!MINENAME!
Taxing District - !DISTRICT!

Dear Taxpayer:

Enclosed is a form for reporting your 1992 actual quarterly amounts of production, gross yield and net proceeds as of March 31, June 30, September 30 and December 31. If you decide to file this report, please return it to the Department no later than the last day of the month following the end of the calendar quarter. The Department will review such reports to determine whether there exists an additional estimated net proceeds of minerals tax liability for Fiscal Tax Year 1992-93.

The purpose of filing the quarterly report is twofold. First, it affords each taxpayer an opportunity to amend their report of estimated gross yield and estimated net proceeds to avoid a penalty. Secondly, it provides the Department with production data on a quarterly basis. It is the taxpayer's responsibility to provide the Department with the information requested.

Should you have any questions, please contact the Department's Mining Section by calling either Jack Raible at 702-687-6609 or Dave Adams at 702-687-6608.

Sincerely,

Dino DiCianno, Supervisor
Centrally Assessed Properties

DDC:law

CALENDAR YEAR 1992
NET PROCEEDS OF MINERALS
QUARTERLY REPORT FORM

	ACTUAL QUARTERLY AMOUNTS				TOTAL		
CATEGORY	AS OF MARCH 31	AS OF JUNE 30	AS OF SEPTEMBER 30	AS OF DECEMBER 31	ORICINAL ESTIMATE	REVISED ESTIMATE	UNDERESTIMATED DIFFERENCE
Production (Ounces, pounds, tons, etc.)							
Gross proceeds							
Net proceeds							

INFORMATIONAL NOTES

1. Operators are required to fill in all categories listed.
2. Royalty recipients need only fill in the category marked "NET PROCEEDS."
3. First quarterly report due April 30, 1992; second quarterly report due July 31, 1992; third quarterly report due October 31, 1992; fourth quarterly report due January 31, 1993.
4. Return this form in the time frame stated above so the Department can generate a tax bill based upon the underestimated difference.
5. The additional taxes are due 30 days after the quarterly report is filed.
6. If your tax liability for the 1992 estimate is equal to or greater than your total 1991 tax liability, the penalty provisions of NRS 362.130 are avoided.

Mail to the following address:

Nevada Department of Taxation
Centrally Assessed Properties
Capitol Complex
Carson City, NV 89710-0003

_____
Signature

Subscribed and sworn to before me this ____ day of _____, 19____

_____

_____
Notary Public or Two Witnesses

NET PROCEEDS OF MINERALS TAXES QUARTERLY REPORT FORMS

NRS 362.115 states in part:

Each person who is required to file an actual annual net proceeds of minerals report with the department:

1. Shall, on or before June 15 of each year, file with the department a statement showing the estimated gross yield and estimated net proceeds from each such operation for the entire current calendar year, and shall pay the tax upon the net proceeds so estimated to the department on or before July 15 of that year.

2. May file with the department a quarterly report stating an estimate for the year and the actual quarterly amounts of production, gross yield and net proceeds as of March 31, June 30, September 30 and December 31, to establish whether liability for a penalty exists. If the person chooses to submit such reports, the reports must be submitted on a form prescribed by the department no later than the last day of the month following the end of the calendar quarter.

NRS 362.130 states in part:

3. If the amount paid pursuant to NRS 362.115 is less than 90 percent of the actual net proceeds of minerals tax certified, the amount due must include a penalty of 10 percent of the underpayment unless:

(a) The amount paid pursuant to NRS 362.115 is equal to or greater than the total tax liability of the operation for the immediately preceding calendar year; or

(b) The person files quarterly reports persuant to subsection 2 of NRS 362.115 in a timely manner for that year and pays the additional amount due within 30 days after the quarterly report that indicates the additional estimated tax liability is filed with the department. The additional estimated tax liability must be calculated by determining the difference between the revised estimates of net proceeds based on the recent production figures as indicated by the quarterly reports and the original estimate supplied on June 15 of that year.

4. The taxes and any penalty are due on June 30 of that year.

1991 NET PROCEEDS OF MINERALS ADJUSTED ANNUAL TAXES DUE OR CREDIT

NRS 362.130 states in part:

Preparation and mailing of certificate of amount of net proceeds, tax due and date tax due.

1. When the department determines from the annual statement the net proceeds of any minerals extracted, it shall prepare its certificate of the amount of the net proceeds and the tax due and shall send a copy to the owner of the mine, operator of the mine, or recipient of the royalty, as the case may be.

2. The certificate must be prepared and mailed not later than June 10 immediately following the month of February during which the statement was filed.

3. The taxes are due on June 30 of that year.

NRS 362.135 states:

Appeal of certification to state board of equalization and payment of tax pending determination of appeal.

1. Any person dissatisfied by any certification of the department may appeal from that determination to the state board of equalization. The appeal must be filed within 30 days after the certification is sent to the taxpayer.

2. Pending determination of the appeal, the person certified as owing the tax shall pay it on or before the date due, and the tax is considered to be paid under protest.

NRS 362.150 states in part:

Liens for taxes on proceeds of minerals.

1. Every tax levied under the authority or provisions of NRS 362.130, on the proceeds of minerals extracted is hereby made a lien on the mines from which minerals are extracted for sale or reduction, and also on all machinery fixtures, equipment and stockpiles of the taxpayer located at the mine site or elsewhere in the state. The lien attaches on the 1st day of January of each year, for the calendar year commencing on that day and may not be removed or satisfied until the taxes are paid, or the title to those mines has vested absolutely under a sale for those taxes.

NRS 362.160 states in part:

When tax payment becomes delinquent and collection of delinquencies.

1. If the amount of any tax payment required by NRS 362.130 is not paid within 30 days after it is due, it is delinquent and must be collected as other delinquent taxes are collected by law, together with the penalties provided for the collection of delinquent taxes.

1992 NET PROCEEDS OF MINERALS
ESTIMATED ANNUAL TAXES DUE OR CREDIT

NRS 362.115 states in part:

Each person who is required to file an actual annual net proceeds of minerals report with the department:

1. Shall, on or before June 15 of each year, file with the department a statement showing the estimated gross yield and estimated net proceeds from each such operation for the entire current calendar year, and shall pay the tax upon the net proceeds so estimated to the department on or before July 15 of that year. If an estimate form is filed, the amount due under the final certification pursuant to NRS 362.130 is the difference between the total tax established upon the certification and the sum of the estimated payments made or credited, if any for that calendar year. If the sum of the estimated payments exceeds the total tax, the taxpayer is entitled to credit the excess against the ensuing estimates or final taxes due until it is exhausted, or, if the taxpayer files a statement with the department which indicates that he will have no tax liability for the next calendar year, upon verification by the department, the taxpayer is entitled to receive a refund.

NRS 362.135 states:

Appeal of certification to state board of equalization and payment of tax pending determination of appeal.

1. Any person dissatisfied by any certification of the department may appeal from that determination to the state board of equalization. The appeal must be filed within 30 days after the certification is sent to the taxpayer.

2. Pending determination of the appeal, the person certified as owing the tax shall pay it on or before the date due, and the tax is considered to be paid under protest.

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When tax payment becomes delinquent and collection of delinquencies.

1. If the amount of any tax payment required by NRS 362.115 is not paid within 30 days after it is due, it is delinquent and must be collected as other delinquent taxes are collected by law, together with the penalties provided for the collection of delinquent taxes.

STATE OF NEVADA

DEPARTMENT OF TAXATION

1992-93
NET PROCEEDS OF MINERALS

BASED ON 1992 CALENDAR YEAR ESTIMATE

PREPARED BY THE
DIVISION OF ASSESSMENT STANDARDS
FOR CERTIFICATION BY THE DEPARTMENT OF TAXATION

July 1, 1992

NEVADA TAX COMMISSION

Honorable Bob Miller
Governor, Ex Officio Member

Norman D. Glaser
Chairman

Members

Keith Ashworth
Barbara Smith Campbell
Candace E. Fox
Harley E. Harmon
John E. Marvel
W. R. McGrew
Henry B. Sprenger, Sr.

STATE BOARD OF EQUALIZATION

Lawrence W. Bennett
Chairman

Members

Richard Davis
Rose M.K. Dominguez
Rodney Larva
Reese Perkins

DEPARTMENT OF TAXATION

John P. Comeaux
Executive Director

DIVISION OF ASSESSMENT STANDARDS

David P. Pursell
Chief

Lila Clark
Supervisor
Locally Assessed Properties

Dino DiCianno
Supervisor
Centrally Assessed Properties

Joseph S. McCarthy
Coordinator

FOREWORD

The Division of Assessment Standards developed this bulletin to outline the assessment and taxation statistics resulting from the 1992 estimated gross and net proceeds of minerals reports. Nevada Revised Statute 362.115 requires every mining taxpayer to file this report with the Department of Taxation by June 15, 1992. The taxes associated with this assessment is due and payable by July 15, 1992. The statistics in this bulletin include both the assessment amounts and the actual tax revenues generated by these reports.

Page 1. Estimated net proceeds of minerals totals, by county, for both operators and royalty recipients.

1987 thru 1992 comparison, by county, of total estimated net proceeds of minerals.

Page 3. Estimated gross proceeds of minerals totals, by county.

1987 and 1992 comparison, by county, of the total estimated gross proceeds of minerals.

Page 6. Six-year summary of the actual taxes generated by the estimated net proceeds of minerals for both the counties and the state and their average annual tax rate.

Page 8. thru Page 14. List of every mining operator, by county, showing: The 1992 estimated gross and net proceeds, the 1992 estimated taxes due to the county, the 1992 estimated taxes due to the state, and the total estimated taxes due.

Page 15. thru Page 23. List of every mining royalty recipient, by county showing:

The 1992 estimated royalties, the 1992 estimated taxes due to the county, the 1992 estimated taxes due to the state and, the total estimated taxes due.

Page 24. Statewide total of the preceding categories by operators and royalty recipients.

Illustrative graphs amplifying the significance of the data are included throughout the bulletin.

Recent legislation has been enacted that affects the assessment and taxation of net proceeds. This legislation required the Division to amend and expand its procedures in order to implement the new legislation. The following is a summary of those procedures and a brief history of the legislation.

The Division of Assessment Standards calculates the annual net proceeds of minerals assessment for each producing mine in Nevada by desk auditing an annual report of actual mining production for the preceding calendar year. These actual amounts are used to make a final adjustment of the tax liability. The tax liability was originally determined from the estimate made during the year of production. Prior to the 1987 passage of Assembly Bill No. 872, mining taxpayers were not required to file an estimate. All of the net proceeds of minerals assessments were calculated using the actual gross and net proceeds of minerals amounts.

When computing the actual net proceeds of minerals tax, the Division deducts allowable mining expenses from the gross proceeds of mining operations to arrive at the assessable net proceeds. The tax rate of the district where the mining operation is located determines the tax liability. The tax rate for the year corresponds to the net proceeds' calendar year report.

For example, this bulletin represents the estimated 1992 net proceeds for which the 1992-93 tax rate was used. When the actual production reports are submitted in February of 1993, the Division will calculate the total tax liability using the 1992-93 tax rates, adjust the final taxes due and distribute this additional revenue to the proper taxing jurisdictions. This bulletin only reflects the calculated estimated taxes to the county and the state based on the reported 1992 estimates filed on June 15, 1992 with the Department.

In 1987, the Legislature enacted Assembly Bill No. 872 which amended the net proceeds statutes in NRS Chapters 362.115 and 362.130. The amendment authorized the Department to require mining companies, with a 25% net to gross proceeds ratio to estimate the current year's gross proceeds and net proceeds, and pay in advance all taxes on the estimate. In addition, all royalty recipients associated with these mining operations were required to file an estimate of the current year's total royalties received, and pay the estimated tax. The act also mandated that the Department reconcile each taxpayer's actual tax liability with the taxes paid on the estimate, bill the taxpayer for the adjusted taxes due or give the taxpayer a credit if necessary.

Assembly Bill No. 872 also required that the mining industry voluntarily prepay $10.5 million dollars in 1988-89. This payment was made to offset the anticipated higher taxes that the mining industry will pay after the constitutional amendment passed in 1989. The taxpayers making the prepayment are entitled to credit the prepaid amount against their net proceeds' tax liability beginning in 1992. The credit is triggered if the 1992 total net proceeds revenues exceed $50 million dollars and is limited to 10% per year.

In 1987, the counties received the taxes based on the mining industry's calendar year 1986 net proceeds of minerals. This was the first year that the mining taxpayers filed their estimate of the current year's gross proceeds, net proceeds, and anticipated taxes due. The estimated taxes were deposited in the state's general fund. These 1987 estimated taxes were simply an accelerated payment.

As a result of the passage of Senate Bill No. 61 by the 1989 Legislature, NRS 361.115 indicates that all mining taxpayers must file an estimate of the current year's gross proceeds and net proceeds by June 15th. This requirement applies to every taxpayer who, by law, already must file an annual net proceeds statement reporting the preceding year's actual mining activity. Senate Bill No. 61 is the enabling legislation that implemented Senate Joint Resolution No. 22, a constitutional amendment approved by Nevada's electorate on May 2, 1989. SJR 22 increased the tax rate limit to a maximum of 5% for calculating the tax on the net proceeds of minerals. The additional revenue produced by this constitutional amendment will be placed in the state general fund. Senate Bill No. 61 also provided the authority for the Department to certify the assessments, bill and collect the estimated taxes, and adjust the prior year's estimated taxes.

Assembly Bill No. 770, which also passed during the 1989 legislative session, added changes to NRS 362 pertaining to the taxation of net proceeds of minerals. All mining operator's whose net proceeds exceed $4 million dollars in a calendar year must pay the net proceeds tax at the maximum 5% rate. Senate Bill No. 61 indicates that all royalty recipients must pay the net proceeds tax at the maximum 5% rate. Assembly Bill No. 770 indicates that a 10% penalty will be assessed if estimates are understated. The penalty is waived if the taxes in the current year are equal to or greater than the taxes paid in the previous year, or if the estimated payment is within 90% of the amount certified. Mining taxpayers may file quarterly statements reporting gross yield and net proceeds. These statements provide the mining taxpayer with the opportunity to revise the original estimated net proceeds and pay the additional tax before a penalty for underestimation is assessed.

CALENDAR YEAR 1992 ESTIMATED NET PROCEEDS OF MINERALS
CERTIFIED BY THE DEPARTMENT OF TAXATION

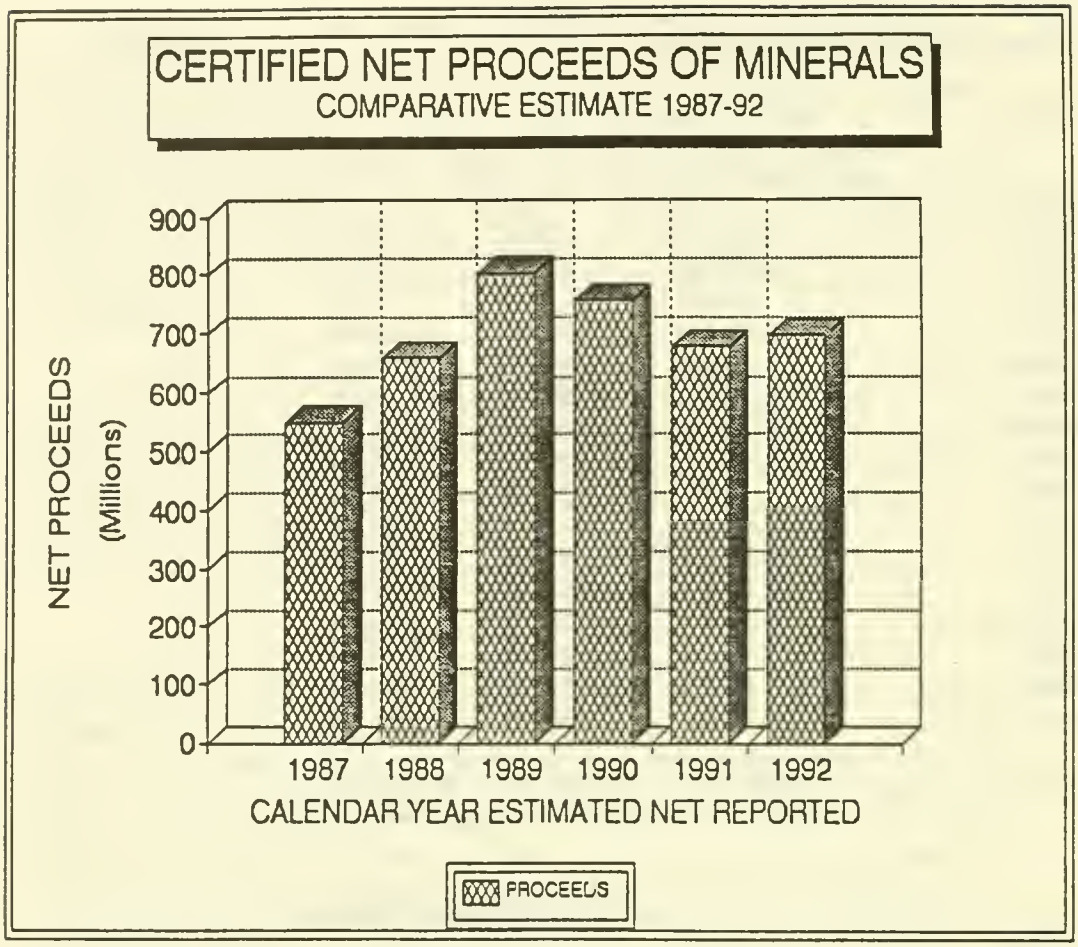
STATEWIDE

	OPERATORS	ROYALTIES	TOTAL
CARSON CITY	$0	$0	$0
CHURCHILL	34,368,185	441,085	34,809,270
CLARK	4,804,044	230,000	5,034,044
DOUGLAS	23,000	0	23,000
ELKO	38,596,529	2,023,745	40,620,274
ESMERALDA	7,874,680	289,797	8,164,477
EUREKA	244,922,632	52,251,471	297,174,103
HUMBOLDT	80,720,572	1,395,661	82,116,233
LANDER	45,878,228	1,737,469	47,615,697
LINCOLN	20,000	99,574	119,574
LYON	281,500	0	281,500
MINERAL	14,739,437	1,316,966	16,056,403
NYE	129,580,777	10,516,198	140,096,975
PERSHING	6,886,980	1,339,136	8,226,116
STOREY	1,500,000	90,823	1,590,823
WASHOE	840,000	1,686,572	2,526,572
WHITE PINE	8,786,514	1,215,850	10,002,364
TOTAL	$619,823,078	$74,634,347	$694,457,425

COMPARATIVE ESTIMATED NET PROCEEDS

STATEWIDE

	1987	1988	1989	1990	1991
CARSON CITY	$0	$7,771	$5,000	$6,500	$3,000
CHURCHILL	0	207,253	12,010,957	18,150,828	25,483,167
CLARK	3,749,500	4,460,875	6,377,200	5,337,747	5,261,977
DOUGLAS	12,920	9,992	25,250	26,000	24,500
ELKO	79,787,923	76,980,815	68,504,975	47,163,918	43,967,111
ESMERALDA	6,811,089	8,048,453	8,962,736	1,995,621	7,783,640
EUREKA	186,669,963	223,028,608	258,618,327	249,859,510	253,999,545
HUMBOLOT	66,133,899	81,318,566	160,875,071	136,555,864	123,738,451
LANDER	63,513,388	76,427,710	59,754,419	65,713,742	58,743,934
LINCOLN	0	11,800	258,300	88,100	89,163
LYON	2,100	1,835	108,710	131,900	906,591
MINERAL	1,319,106	16,453,594	22,587,337	15,211,620	13,034,055
NYE	103,698,478	113,390,953	125,166,970	165,425,765	97,718,287
PERSHING	6,817,239	22,292,539	37,136,575	20,708,457	14,503,424
STOREY	3,272,343	1,777,880	2,603,633	2,893,233	3,390,189
WASHOE	9,859,500	9,601,817	643,464	7,846,423	17,711,574
WHITE PINE	18,313,000	24,687,660	39,150,275	18,339,869	11,089,478
TOTAL	$549,960,448	$658,708,121	$802,789,199	$755,445,097	$677,448,086

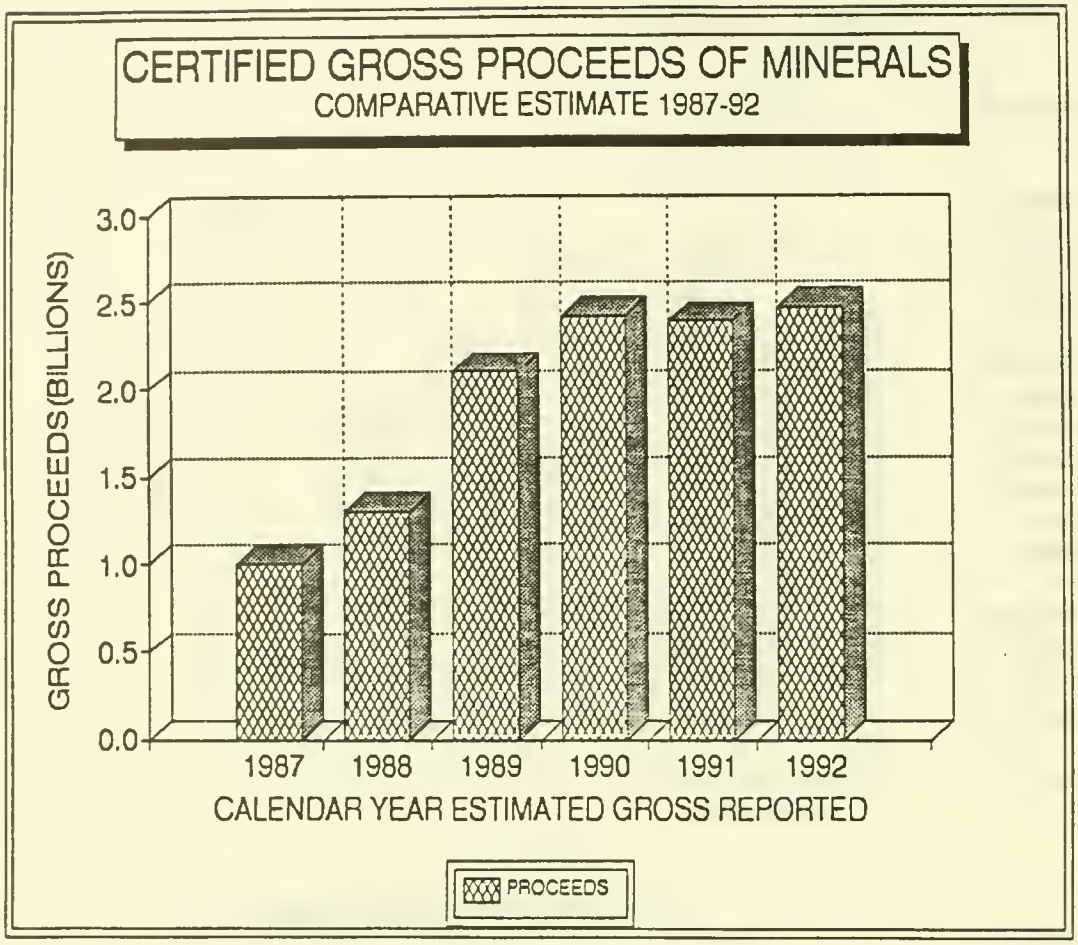

CERTIFIED NET PROCEEDS OF MINERALS
COMPARATIVE ESTIMATE 1987-92
NET PROCEEDS
(Millions)
900
800
700
600
500
400
300
200
100
0
1987
1988
1989
1990
1991
1992
CALENDAR YEAR ESTIMATED NET REPORTED
PROCEEDS

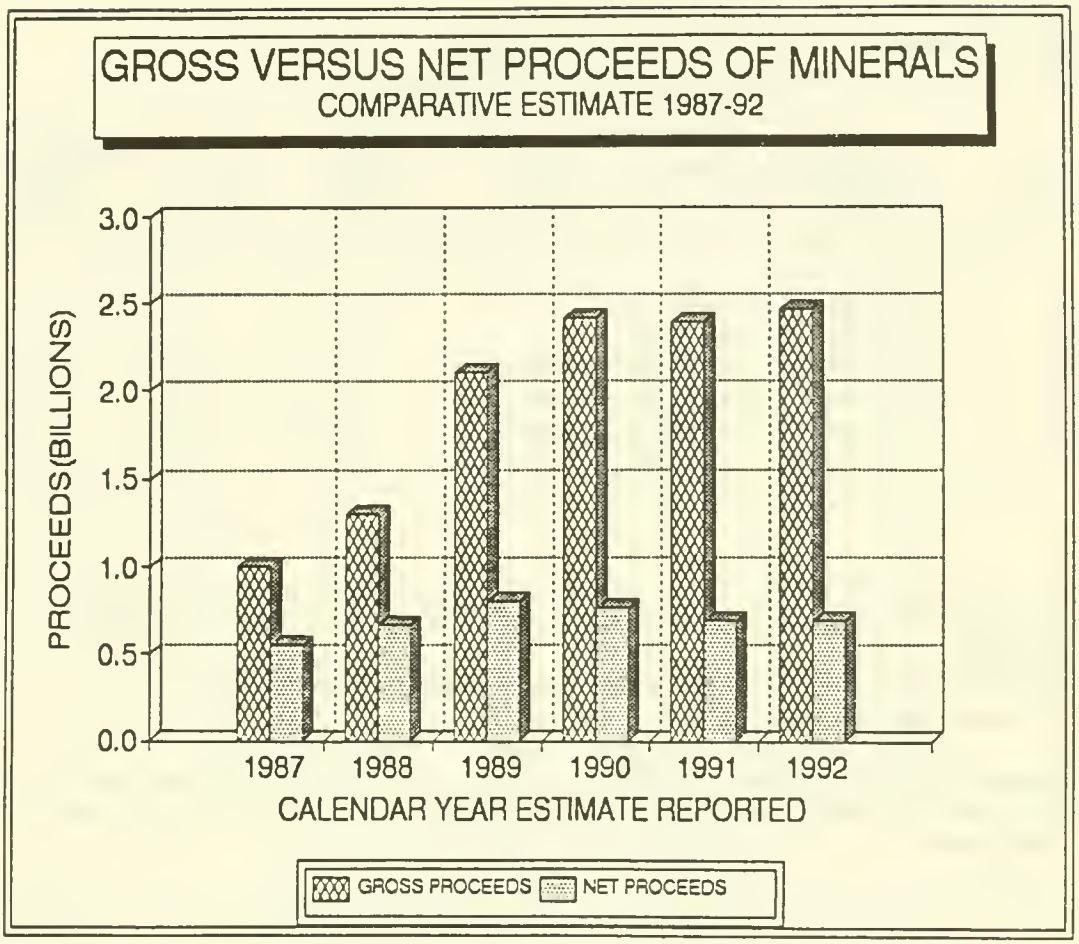
CALENDAR YEAR 1992 ESTIMATED GROSS PROCEEDS OF MINERALS

STATEWIDE	1992 OPERATORS
CARSON CITY	$0
CHURCHILL	65,214,767
CLARK	18,018,626
DOUGLAS	28,000
ELKO	211,387,622
ESMERALDA	17,444,720
EUREKA	871,662,771
HUMBOLDT	413,756,768
LANDER	246,664,991
LINCOLN	640,000
LYON	11,328,186
MINERAL	78,762,135
NYE	356,592,766
PERSHING	83,600,827
STOREY	4,146,000
WASHOE	30,383,572
WHITE PINE	59,490,162
TOTAL	$2,461,033,913

COMPARATIVE ESTIMATED GROSS PROCEEDS

STATEWIDE	1987	1988	1989	1990	1991
CARSON CITY	$0	$13,440	$8,500	$10,000	$10,000
CHURCHILL	0	446,656	50,020,413	55,601,975	55,246,066
CLARK	8,617,860	11,100,000	20,598,168	20,295,426	18,822,949
DOUGLAS	14,000	11,322	35,000	35,000	30,000
ELKO	154,672,907	144,396,000	207,049,214	184,403,061	250,843,887
ESMERALDA	15,745,030	17,140,758	20,144,900	21,833,044	26,922,920
EUREKA	307,774,314	407,172,479	606,990,835	723,302,081	735,569,983
HUMBOLDT	100,484,012	135,653,500	306,856,992	314,722,342	385,059,106
LANDER	114,812,221	140,184,350	251,436,124	265,601,769	253,755,794
LINCOLN	0	200,000	500,000	840,000	584,472
LYON	15,000	4,800	2,475,152	3,775,444	10,617,585
MINERAL	20,322,196	31,546,211	88,327,669	98,207,863	77,216,112
NYE	199,600,433	245,540,776	282,107,229	465,030,212	339,414,049
PERSHING	12,349,779	75,615,854	118,870,510	95,590,506	91,801,940
STOREY	4,414,400	4,250,000	10,532,552	12,300,000	12,839,000
WASHOE	21,263,000	23,400,000	20,872,000	40,518,000	50,353,294
WHITE PINE	44,114,150	61,500,000	112,863,006	106,131,644	66,110,044
TOTAL	$1,003,407,302	$1,298,176,146	$2,099,688,272	$2,408,198,367	$2,375,197,209


CERTIFIED GROSS PROCEEDS OF MINERALS
COMPARATIVE ESTIMATE 1987-92
GROSS PROCEEDS(BILLIONS)
3.0
2.5
2.0
1.5
1.0
0.5
0.0
1987
1988
1989
1990
1991
1992
CALENDAR YEAR ESTIMATED GROSS REPORTED
PROCEEDS

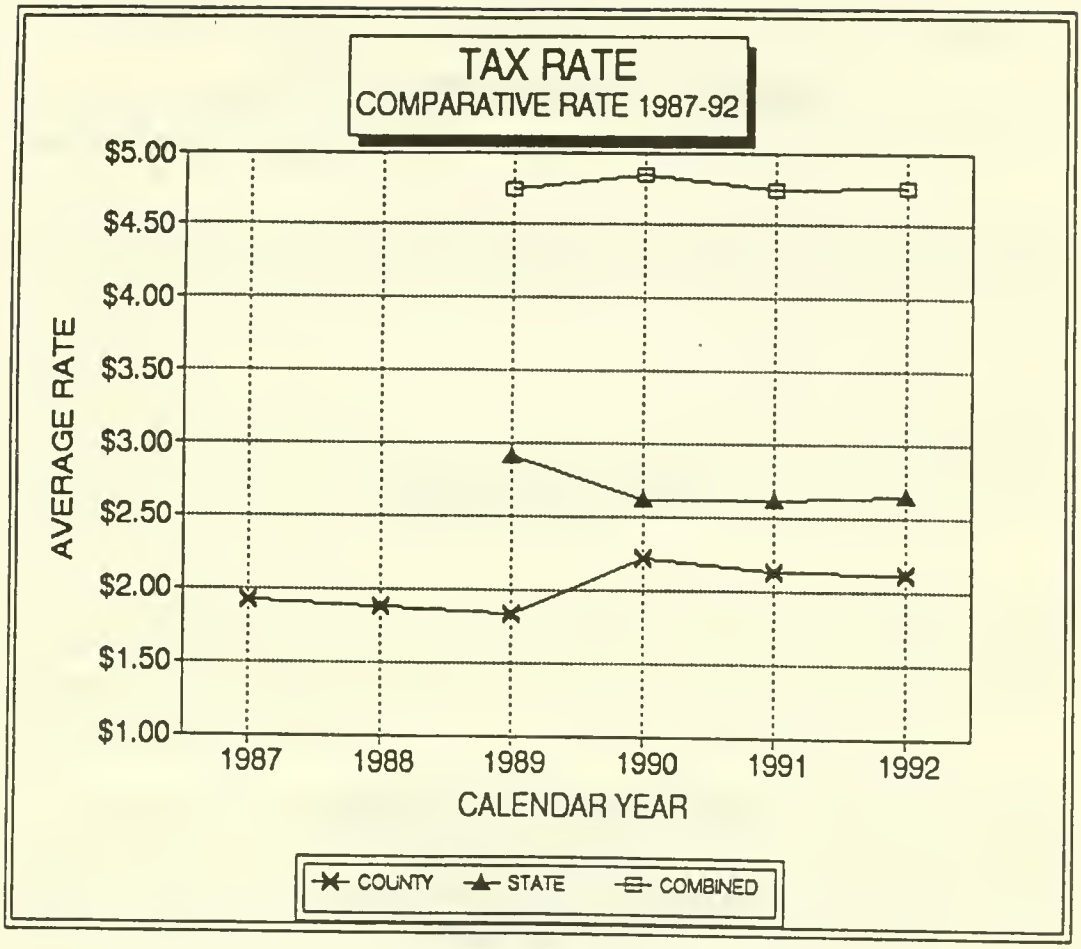

GROSS VERSUS NET PROCEEDS OF MINERALS
COMPARATIVE ESTIMATE 1987-92
PROCEEDS(BILLIONS)
3.0
2.5
2.0
1.5
1.0
0.5
0.0
1987
1988
1989
1990
1991
1992
CALENDAR YEAR ESTIMATE REPORTED
GROSS PROCEEDS
NET PROCEEDS

COMPARATIVE SURVEY OF ESTIMATED NET PROCEEDS OF MINERALS
ANNUAL TAX REVENUES
BASED ON CALENDAR YEAR 1992 ESTIMATED REPORTS

CALENDAR YEAR	ANNUAL ESTIMATED NET PROCEEDS	ANNUAL COUNTY REVENUE	ANNUAL STATE REVENUE	AVERAGE COUNTY TAX RATE	AVERAGE STATE TAX RATE	AVERAGE COMBINED TAX RATE
1987	$549,960,448	$10,552,509	*	1.92		
1988	658,708,121	12,349,739		1.87		
1989	802,789,199	14,742,188	$23,325,713 **	1.84	2.91	4.75
1990	755,445,097	16,798,789	19,804,860	2.22	2.62	4.84
1991	677,448,086	14,405,794	17,763,056	2.13	2.62	4.75
1992	694,457,425	14,730,860	18,397,883	2.12	2.65	4.77

* THE REVENUE FROM THE FIRST ESTIMATE (1987) WAS SENT TO THE NEVADA STATE CONTROLLER PURSUANT TO AB 872.
REVENUES TO THE COUNTY FOR 1987 WERE ESTABLISHED BY COMBINING THE ADJUSTED NPM FOR CALENDAR YEAR 1987 PLUS THE ESTIMATE FOR 1988.

** REVENUES TO THE STATE BEGINNING IN 1989 WERE ESTABLISHED BY THE CONSTITUTIONAL AMENDMENT SJR 22 ALONG WITH ENABLING LEGISLATION THRU SB 61. NEVADA REVISED STATUTE CHAPTER 362 REFLECTS THESE CHANGES.


TAX RATE
COMPARATIVE RATE 1987-92
AVERAGE RATE
$5.00
$4.50
$4.00
$3.50
$3.00
$2.50
$2.00
$1.50
$1.00
1987
1988
1989
1990
1991
1992
CALENDAR YEAR
COUNTY
STATE
COMBINED

IMPACT OF STATE TAXATION ON THE MINING INDUSTRY

- A STUDY OF EIGHTEEN STATES -

SEPTEMBER 1989

WHITNEY & WHITNEY, INC.
35 N. EDISON WAY, #6
P.O. BOX 10725
RENO, NEVADA 89510
(702) 323-3050

NEVADA

Tax information for Nevada is based on a review of pertinent sections of the Nevada Revised Statutes [N.R.S.] and supplements through 1988.

Mining companies in Nevada are subject to the following taxes: a property tax, the net proceeds of mines tax, and sales/use taxes. There is no corporate income tax.

Property Tax

All real and personal property is taxed in Nevada unless specifically exempted by law [N.R.S. §361.045]. Both unpatented mines and mining claims are exempt from this type of property taxation [N.R.S. §361.075].

"Real property" includes general ownership or possessory interests in lands in the state (except federal land upon which the federal government pays taxes to the state or moneys in lieu of taxes), buildings, fences, ditches, structures, roads and improvements [N.R.S. §361.035].

"Personal property" includes machinery and equipment, furniture, inventories, libraries, livestock, improvements, and vehicles unless exempt. Gold and silver-bearing ores and quartz or minerals from which gold or silver is extracted are exempt from personal property tax when in the hands of the producers [N.R.S. §361.030].

All property is subject to assessment at 35% of its taxable value [N.R.S. §361.225]. The following factors are considered by the State Department of Taxation in determining the taxable value of real property:

- the estimated value of vacant land and improvements less depreciation;
- the market value; and
- the value of the property estimated by capitalization of the fair economic income [N.R.S. §361.227].

The minimum assessment for patented mines is $500, except where $100 development work is performed during the tax period [Nevada Constitution Article 10.1].

Net Proceeds of Mines

Net proceeds represent the second part of the total assessed valuation related to mining which forms the base for the tax revenues collected from mining operations.

Every person, corporation or association operating a mine containing gold, silver, copper, zinc, lead or other valuable minerals, metallic or nonmetallic, is required to file with the county assessor an annual report showing gross yield and net proceeds from each mine for the preceding calendar year. The report must be filed on or before February 15 of each year [N.R.S. §362.110]. Every operator and royalty recipient must estimate net proceeds for the current calendar year and prepay the estimated net proceeds tax by July 15 [N.R.S. §362.115, §362.130 & §361.483].

Net proceeds are calculated by subtracting from gross yield the following direct costs [N.R.S. §362.120]:

- Cost of extracting the ore;
- Cost of transportation of the ore from the mine to the place of reduction, refining and sale;
- Cost of reduction, refining and sale;
- Cost of marketing and delivering the product and of the conversion of the product into money;
- Cost of maintenance and repairs of machinery, equipment, plants and facilities;
- Cost of insurance and social security, accident benefits, hospital and medical attention;
- Depreciation;
- Development work; and
- Royalties.

Interest expense, federal and state taxes, and corporate overhead are not deductible for net proceeds tax purposes. Depreciation is straight-line, with lives of 20 years, 10 years and 5 years for buildings and fixed machinery, mobile machinery, and vehicles respectively.

The net proceeds tax rate is a function of the ratio of net proceeds to gross yield as follows:

Net Proceeds ÷ Gross Yield	Tax % of Net Proceeds
Less than .10	2%
At least .10 but less than .18	2.5%
At least .18 but less than .26	3%
At least .26 but less than .34	3.5%
At least .34 but less than .42	4%
At least .42 but less than .50	4.5%
.50 or greater	5%

Any company with net proceeds in excess of $4 million in the state is taxed at the 5% of net proceeds rate.

Sales and Use Taxes

Retail sales are taxed at the rate of 5 3/4%. Retailers collect the tax from purchasers and report these amounts to the Nevada Department of Taxation. The 5 3/4% tax rate includes the 2% state rate, a 1 1/2% local school levy, and a 2 1/4% county levy [N.R.S. §372.105]. Local jurisdictions may add a 1/4% transportation component to the statewide tax levy.

In Nevada, use tax is imposed on the user of tangible personal property purchased from retailers outside the state. The tax rate is 5 3/4%, also subject to the 1/4% local add-on.

Exemptions from the sales and use taxes include gross receipts from the sale, storage or use of the proceeds of mines [N.R.S. §372.270] and the sale, storage or use of gas, electricity, and water when delivered to consumers through mains, lines, or pipes [N.R.S. §372.295]. Property subject to the sales tax is not subject to the use tax [N.R.S. §372.345].

Mr. LEHMAN. Obviously we are not going to negotiate this here, and that is not my intention, but it is an issue we are going to have to resolve, and we have pressures on us around here, other than your industry pulling in different directions.

We are going to have to be very careful. And I think you should be mindful of that, that the way things happen around here in the process of coming up with budget numbers, it may come from somewhere unknown, and may be far less favorable than this is, if you think that is possible, and unless we reach some agreement on it and can stick with it, we are not going to have control over that as it goes on.

The second issue I want to try to get a little more meat on is reclamation. Again, based on my own experience—and I could cite a number of Western issues here to prove it—but I don't believe we are going to continue a system where the States make up the reclamation requirements for Federal land and then enforce them. In some instances, I am told some States don't have any requirements; some States do.

I think you are wide open on that, and again, I'm not trying to beat you over the head with the merits, I am not an expert, but there are going to be some Federal standards. And again, the key is trying to create them so that they make sense, so that they are not unduly restrictive and unnecessarily punitive, and it helps to have your cooperation in attempting to do that.

I understand it is difficult, but maybe one of you could briefly identify here for the record those elements of the reclamation process in Mr. Rahall's bill that you find most objectionable. Do you have to pay for it? I understand that.

Dr. DEVOTO. I will comment. In my written testimony I mentioned three specific items that I think need some modification in the bill. First of all, let me state that I believe that my company and most of the industry is actually now conducting all of its new operations under EPA standards, guidelines, normal environmental impact statement procedures, whether the projects be on Federal lands or State lands. And so much of the objective and the implementation that are in this bill are constant with what we are already doing.

The specific points that I see in the reclamation language which offer discretionary authority to the regulators that we are concerned about, one is the backfilling of open pits and open-pit mining operations, and in most locales now backfilling is not automatically required. It may be required in certain instances, but this bill can be interpreted to require that. And that is a concern.

Second, certainly when you open up a surface mine, there will be some displacement of wildlife at that immediate acreage. The provisions in the law now provide for mitigation off-site, possibly with two to three times the acreage, mitigating wildlife environment off-site as making up for the lost environment at the site that is generated.

I read the bill that unless you can get those particular worms or grasses to grow in that open pit, you can't generate it. And those are two of the concerns.

Mr. LEHMAN. Mr. Fields, in looking at your written testimony, I believe you said that in Nevada, you require reclamation, but you

give exemptions where the company shows it is too costly; is that correct?

Mr. FIELDS. That is only with regard to backfilling of pits. Reclamation as defined in our statute is contouring, shaping, revegetating, and returning the land to a post-mine beneficial use in a stable condition.

My comments were only with regard to the backfilling of the pits.

Mr. LEHMAN. We will get into both of those. On backfilling, then, it is only required when, what?

Mr. FIELDS. It would only be required when you are mining in an adjacent pit, for example, and the material from the one pit could be placed into an adjacent pit, and that could be economically accomplished. If that were the case, then backfilling would be required under our State law.

Mr. LEHMAN. It seems to me you get into a situation here where the ones that might need it the most are the ones least likely to benefit from it, because you are only going to require it where it is adjacent to where it will be done, so that cost has to be incurred. So the company is better off digging a hole someplace else.

Mr. FIELDS. Well, as was mentioned earlier, the company would only dig the hole where there is a viable mineral deposit.

Mr. LEHMAN. And getting back to the other area, the reclamation requirements in your State then differ from the reclamation requirements in this bill in that you require a post-mining use of the land, and as Dr. DeVoto interprets the bill, this would require it to be returned to pre-mining conditions. Is that fair?

Mr. FIELDS. That is right. In Nevada, the requirement to accomplish a post-mine beneficial use is something that is agreed on prior to actual mining beginning, agreed on between the land owner, or in the case of Federal land, the Bureau of Land Management, U.S. Forest Service, and the operator. In the case of our private lands in the State, it would be the owner of the private lands determination of what that post-mine beneficial use was.

But in any case, the stability, the contouring, the shaping and the revegetation and the providing for public safety are required. And that is true on both private land and public land.

Mr. LEHMAN. Mrs. Vucanovich.

Mrs. VUCANOVICH. Thank you, Mr. Chairman. Mr. Fields, you administer the Abandoned Mines Program for our State, the State of Nevada. How is that funded?

Mr. FIELDS. That program is entirely funded by fees and assessments that the mining industry pays. We have a fee every time a claimant files a claim in one of the county seats; it comes to the Department of Minerals for that program.

We have another fee every time a Federal plan of operations is approved. The State takes $20 per acre and applies that to the Abandoned Mine Lands Program. Total generated money is around $240,000 a year. And we apply that to identifying and ranking the degree of hazard out at old open shafts and attics. These are mines that were dug long before there were any requirements to make those safe.

We build fences around them; we contract with others to build fences around them. Where there are responsible parties, we have a procedure which causes the responsible parties to go ahead and

take care of them, to prevent people from falling into these old shafts.

Mrs. VUCANOVICH. You know I know that our Governor isn't speaking of royalty provision on Federal lands, but it looks as if he may be considering a net proceeds tax here, and I think that that is what we are going to be looking at, I hope, if we look at any tax. But wouldn't Governor Miller seek to have half of the revenues returned to the State in the same manner as coal royalties and oil and gas revenues and other Mineral Leasing Act commodities? You know, the State now gets only 25 percent back. Is there some reason that distribution of coal revenues should be treated differently?

Mr. FIELDS. I haven't talked personally with the Governor about that, although I will say that the 50 percent that does come back from Minerals Management Service on our oil and gas production and other saleable minerals is an important thing to the State. It goes into the School Distributative Fund, and I believe that if a royalty were placed on hard rock minerals, I think it would be fair to send 50 percent back to the States.

Mrs. VUCANOVICH. And that would then be less going to the Federal Government, obviously?

Mr. FIELDS. Yes.

Mrs. VUCANOVICH. Than the revenue?

Mr. FIELDS. Yes.

Mrs. VUCANOVICH. What effect did the $100 per claim holding fee that would pass this year have upon the revenues provided the State of Nevada?

Mr. FIELDS. We haven't seen the full effect of that yet, Mrs. Vucanovich. The fee is not due and payable until August 31, 1993. However, claimants have the——

Mrs. VUCANOVICH. He said——

Mr. FIELDS. Next August. That is when a two $100 payments are due. But, I can tell you that just because that fee is out there, we think we have lost about 19 percent of the claims by virtue of not filing the required December 30 filing with the Bureau of Land Management. Our expectation is more than 50 percent of the claims will be dropped as a result of that fee.

Mrs. VUCANOVICH. Are there any major mining operations in the State which have failed to pay the net proceeds tax?

Mr. FIELDS. Well, a company that has gained some notoriety in today's hearings is the American Barrick operation, the Barrick Goldstrike mine. And that has been held out as perhaps an example of why net proceeds might not be a good approach.

But I want to tell the committee that in 1992, final payment is due April 15 to our State. They will pay some $3 million in net proceeds. This will be the first year that they pay.

In the meantime they have invested over a billion dollars, as we have heard; they have generated revenues of about a half-a-billion dollars, something like that. The net proceeds concept allows companies to deduct the costs that they put into developing these mines, and the capital costs are put in the year that they are spent.

They are not amortized over a long period of time. So in development stages the State doesn't expect to receive a net proceeds tax.

But when a mine reaches steady state, then the State benefits from the profits just as the company does.

Mrs. VUCANOVICH. As you pointed out, approximately 85 percent of our land area is managed by the Federal Government. Approximately how much of this land is not open to mining, and what are the reasons?

Mr. FIELDS. Okay. There are about 57 million acres in Nevada that are federally managed land. As you say, 85, 87 percent. Of that, approximately between 14 and 15 million, I believe it is, are not available to mineral entry, mining under the mining laws. That is, 25 percent of the Federal land is not available.

The reason for that is military withdraws, the test site which includes Yucca Mountain, the various wilderness areas that we have in our State, and the wilderness study areas, which as you know, are managed as de facto wilderness until Congress decides on it. There are National Recreation Areas, National Conservation Areas.

There are various Indian lands that are unavailable to exploration under the Mining Laws. Those are examples of the kind of lands withdrawn and not available.

Mrs. VUCANOVICH. Approximately what percentage of the land is available then, of the federally owned land, federally managed land?

Mr. FIELDS. Okay. Then it would be 75 percent of 87 percent. About 60-plus percent.

Mrs. VUCANOVICH. Okay. Dr. Dobra, I have a couple of questions I was going to ask you. The royalty proposed by H.R. 322 is a gross royalty, and what is the difference between what is proposed by H.R. 322 and the net proceeds tax that we have in Nevada?

Dr. DOBRA. Okay. The net proceeds tax starts with the same base, gross receipts, gross incomes it is called in the act, and then allows deduction of about 7 different categories of costs. The primary ones, though, which make up about 80 percent of the deductions are extraction cost, that is the actual mining, and then the processing costs. And then there is a number of other smaller deduction categories.

Mines are allowed to deduct certain marketing expenses, and these are specified in the statutes and regulations so that it is not wide open. Certain insurance expenses, I can't tell you, but there is differential treatment between fire insurance and say health insurance for workers. Royalties are allowed to be detected, but the royalty recipient is the private individual, then pays the tax on that royalty, so the royalty really doesn't escape taxation, but it is one of the deduction categories. There are several others.

Which ones have I left out? They are pretty minor ones. As I said, extraction and processing make up 80 percent of the deductions. So what you are left with is a figure that is not net income; it is actually substantially larger than net income the way an accountant would define net income, but it represents on-site direct production costs; it doesn't include corporate overhead, it doesn't include legal fees, it doesn't include interest on borrowed capital and so forth. It is really direct, and by design, it is direct production costs.

Mrs. VUCANOVICH. How does the gross royalty proposed by H.R. 322 compare with private royalties that companies already pay?

Dr. DOBRA. Well, the key to understanding private royalties is that any time you have one, they are a negotiated royalty. They are the result of the claim holder and the ultimate producer getting together and coming to an agreement as to what is reasonable. And so it is a market transaction.

And you see, if you look at royalties, they range fairly widely, depending upon the bargaining power of the claim holder. And in cases where we are talking about small fractions of larger blocks, a royalty or a claim holder may have very little bargaining power. The royalty rates tend to be low, or where the claim holder has a substantial interest, those royalties tend to be more.

Mrs. VUCANOVICH. You submitted some materials from the Wall Street investment analysts concerning the gross royalty proposed by this bill. Could you summarize those for me? In other words, how will Wall Street's view of these companies change as a result of the royalty?

Dr. DOBRA. Well, Wall Street, of course, tends to view the behavior of mining companies from the standpoint of their fiduciary interests or the interests of the shareholders, because that is who they are writing for. And as a consequence, they are going to take a dim view of companies or, you know, tend to give them lower ratings, if not buy ratings, maybe even sell ratings which are going to hurt these companies. If they are on public lands and in their operations, they are going to be significantly affected.

The companies need capital raised in these equity markets to go out and expand, and that creates additional pressure on these companies and their obligation to provide a return to their stockholders to seek investments in places where they can get the highest return. And with this royalty, given two equal properties, one in the United States, and one where there is no royalty, they will go elsewhere. So in a sense, Wall Street is going to reward the people that flee.

Mrs. VUCANOVICH. Sure, sure. Mr. Fiske, do you think that Title II or something like it would prevent the recurrence of a Summitville. We have been hearing about Summitville from some of the other panels. Do you think that Title II would make any changes on that, or would have prevented anything happening there?

Mr. FISKE. There would have been perhaps some things done differently, but I would think more of a minor nature. In the view of most of us in Colorado who are observing it, and many of us are observing it without really being involved in it, but certainly have an interest in it in talking with the technical people, Summitville is not a failure of law, it is not a failure of regulations, it is not attributable to a lack of adequate laws and regulations; it has been described as a people failure. The permit was violated, the technical engineering mining people that I talk with are deeply troubled by the nature of the mining activities.

For whatever motives, for whatever purposes, it was a bad mining operation. And whatever amount of laws we may have, you are going to find people who are not going to comply with them for whatever reasons, whether it is deliberate or through incompetence or whatever. Adding a lot more laws is not necessarily going to prevent that. But in answer specifically to your question, we do not

think so, because the laws were adequate; it is that the people didn't comply with them.

Mrs. VUCANOVICH. What do you think is the responsibility of the mining industry to protect the environment and reclaim lands that it effects? We are dealing with Title II. That is our big concern.

Mr. FISKE. Mrs. Vucanovich, again, I am speaking a little bit as a lawyer, I think it almost rises to a fiduciary duty. I think the mining industry has a great, great responsibility in mining upon the public lands, particularly, but just as much on private or other lands. It is our responsibility to operate on those lands and then to leave those lands in a way that is good for society.

Mrs. VUCANOVICH. Well, I think that is what we hope to have happen here in this bill in the negotiating. I don't have any specific questions for Dr. DeVoto, but I certainly sense that you and your company are anxious to try to work with the proposals of both this bill and perhaps Senator Bumpers to try to find answers, because we don't want to put people out of business. That certainly isn't what we should be doing here in Congress, and I hope that we can work with you and we can find some solutions.

Mr. Chairman, I have no other questions, except I am a little bit concerned that some of our earlier panelists spoke about American Barrick's patenting process, and no one on this panel was particularly qualified to set that record straight. And there is a gentleman here, if he is still here, Patrick Garvin, who could maybe just quickly tell you.

Mr. LEHMAN. Mrs. Vucanovich, Mr. Rahall made me aware of that. I would be happy to give the gentleman a choice. I think it might be fairer to him rather than just call him on the spur of the moment to give him the opportunity to put a written statement in the record.

Mrs. VUCANOVICH. That would be fine.

Mr. LEHMAN. And he certainly should have the opportunity to respond, since his company's name was brought up here, I agree.

Mrs. VUCANOVICH. Could we just have unanimous consent then to keep the record open for say 10 days to allow that?

Mr. LEHMAN. Certainly. Certainly. I think that would be appropriate. And without objection.

[The information follows:]

PARSONS BEHLE & LATIMER

A Professional Law Corporation

March 24, 1993

Richard H. Lehman, Chairman
Subcommittee - Energy and Natural Resources
818 O'Neill Office Building
Washington, D.C. 20515

Re: H.R. 322

Dear Chairman Lehman:

At the hearing on H.R. 322 before your Subcommittee on March 11, 1993, much of the oral and written testimony related to mineral patent applications made by Barrick Goldstrike Mines Inc. The testimony contained numerous errors and misrepresentations. At the conclusion of the hearing you invited Barrick to submit material for the record that would clarify the facts concerning such applications. This letter responds to that request.

The principal errors and misrepresentations made to the Subcommittee concerning Barrick's patent applications were contained in the oral and written testimony of Mr. Phillip Hocker, who testified on behalf of the Mineral Policy Center ("MPC"), Alaska Center for the Environment, American Fisheries Society, Greater Yellowstone Coalition, Idaho Conservation League, Izaak Walton League of America, Oregon Natural Resources Council, National Parks and Conservation Association, and Washington Wilderness Coalition.

Mr. Hocker's testimony, which focused more on Barrick's applications than on H.R.322, contended that Barrick and BLM were "co-conspirators" in an "improper procedure" to "giveaway" billions of dollars in federal resources pursuant to a secret BLM program. Mr. Hocker told your Subcommittee that, "tragically," this "abusive" secret program permitted Barrick rather than BLM to determine whether Barrick was entitled to mineral patents. As a result, testified Mr. Hocker, "Barrick managed to complete the entire [patent] procedure in a few months" rather than the two years that is usual. This testimony paints an intriguing picture, which no doubt sells well in the press. However, it has no relationship to the truth.

First, Barrick did not "complete the entire [patent] procedure in a few months." Barrick initiated the patent procedure in June of 1991, two years ago, and patents still have not been signed. Apart from the misrepresentations concerning the length of

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Barrick's patent process, it is ironic that the Mineral Policy Center, which has for several years been trying to convince the public that anyone can simply walk in off the street and buy public land over the counter for $2.50 an acre, now claims the patent process is being abused if it can be completed in less than two years.

Second, contrary to Mr. Hocker's testimony, BLM did not "allow Barrick to evaluate its own claims." BLM, not Barrick, evaluated Barrick's claims. The mineral report that confirms the obvious -- that Barrick's claims contain discoveries -- was prepared by BLM. BLM was assisted in the preparation of that report by a third party contract mineral examiner, Mr. Richard Harty, U.S. Forest Service Certified Mineral Examiner No. 002. This is a process that, while new to BLM, apparently has been common in the Forest Service and National Park Service for years. In any event, BLM did not delegate any of the decision making functions of the mineral report process and directly participated in every element of its preparation. Indeed, the mineral report was ultimately approved at four different levels within the BLM.

The implication of MPC's allegations is, of course, that the "flagrant conflict of interest" inherent in having a contract mineral examiner assist BLM, taints the results of the mineral report, as if a "more objective" report would have reached a contrary conclusion. This is ludicrous. The purpose of the mineral report is to determine one thing -- whether there is sufficient mineralization within a claim to constitute a mineral "discovery." The Goldstrike mine is one of the richest mines in North America, with published reserves, audited annually by Pincock Allen and Holt, in excess of 25,000,000 ounces of gold. Barrick produced in excess of one million ounces of gold from its claims last year. Its deposit is defined by some 5,500 drill holes. There cannot be any serious questions as to whether a "discovery" exists. Indeed, to us it seems odd that MPC contends on one hand that the claims in question are worth $8,482,000,000 but on the other hand suggests to Congress that there is a "conspiracy" between BLM and Barrick to improperly permit Barrick to get a "yes answer" as to the existence of a discovery.

Basically, the MPC developed a sensational story, apparently for the consumption of the press, and presented it to your Subcommittee as factual information. But the facts are otherwise -- Barrick's patent process was not completed in "a few months." Nearly two years later Barrick still does not have patents. Barrick did not examine its own claims. BLM and a BLM and Forest Service certified outside contractor examined the claims and reached a result that could have been safely predicted by anyone remotely familiar with the Goldstrike Mine. The

misrepresentations and misleading innuendo of the MPC testimony are, unfortunately, all too representative of much of the information that Congress is receiving from some advocates of Mining Law reform. We are hopeful that your Subcommittee will begin to insist that you receive credible information and data before responding to contrived "conspiracies" such as the one created by MPC.

Finally, as you may recall, some issues raised by the MPC testimony were also mentioned in the prefiled testimony of Secretary Babbit. Following the hearing, Barrick promptly advised Secretary Babbit of the facts concerning its patent applications. A copy of its letter to the Secretary is also included for your information.

Thank you very much for the opportunity to clarify the record.

Very truly yours,

Patrick J. Garver
PARSONS BEHLE & LATIMER
Counsel for Barrick Goldstrike Mines Inc.

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Mr. LEHMAN. And I also have two things I will insert in the record at this point: from Mr. Rahall, a statement from the Public Resource Associates, and from Mr. LaRocco, a statement from the National Association of Mining Districts.

[The documents follow:]

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STATEMENT OF ELVIS J. STAHR, JR.
ON H.R. 322
TO THE SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES
OF THE HOUSE COMMITTEE ON NATURAL RESOURCES
OF THE U.S. HOUSE OF REPRESENTATIVES

MARCH 11, 1993

PUBLIC RESOURCE ASSOCIATES

Mr. Chairman, Members of the Committee:

My name is Elvis J. Stahr. I am Vice President of Public Resource Associates, a non-profit group interested in the conservation, wise use and renewal of natural resources, including legislative issues revolving around the mining of hardrock minerals on the public lands. I am not appearing in person at this hearing because Public Resource Associates would not fit properly into either of the two panels of today's witnesses, as I will explain in a moment. We want, however, to be of maximum possible assistance to this Committee, and our testimony on H.R. 322 is presented in two parts:

1. This statement, setting forth principles and themes that should guide Congressional action in reforming the Mining Law of 1872.

2. Attachments A through E, consisting of drafts of amendments, legislative provisions and report language that would effect the principles and recommendations in our testimony. Specifically, this part contains:

. Findings that should be the first section of any bill. (ATTACHMENT A)

. Legislative language to effect a workable relationship between land use planning and hardrock mining. (ATTACHMENT B)

. Language to include acquired Federal lands in this location system. (ATTACHMENT C)

. Legislative or report language to clarify the land

management standard governing approval of plans of operation. (ATTACHMENT D)

. Language clarifying and assuring the rights of miners in their claims. (ATTACHMENT E)

Mr. Chairman, we have long advocated the modernizing of the Mining Law of 1872. We testified on that subject at the oversight hearing called by Congressman Rahall in June of 1987, and one or another of my colleagues, John and Putnam Livermore, testified at the hearings held in 1989 and 1991 on follow-up bills. Our collective experience covers just about every aspect of the Mining Law. John Livermore of Nevada is an internationally known and respected exploration geologist; Putnam Livermore of California has more than thirty years' experience as an attorney in the field of natural resources, and I am a long-time conservationist and attorney. I served as president of the National Audubon Society for more than ten years, and I was Secretary of the Army in the Kennedy Administration.

We represent neither the mining community nor the environmental community. As Congressman Rahall knows, we are a small group that for some ten years has been doing and commissioning research, and exchanging views with miners, environmentalists, Federal and State government officials and academics, all with the objective of developing legislative recommendations for modernizing the Mining Law of 1872 in ways best calculated to create a win-win situation for <u>both</u> sides and <u>also</u> for the Government and the public.

Our approach, and we hope yours, is based on the belief that true reform consists of retaining or strengthening what is good, eliminating or changing what is bad, and avoiding moves that make things worse.

In this statement, I will first stress six key propositions as succinctly as possible and then support them and explain at greater length why they are so very important in your crafting of a new Mining Law:

1. A Federal gross royalty on hardrock minerals mined from unpatented claims on the public lands would be a serious, even counterproductive, economic mistake. It would severely cripple and could even halt such mining, and it would not and could not produce significant net revenue to the Government. Destruction of incentive to explore, complexity in administration, and costs of collection, all argue against any royalty. If a royalty must be considered, however, a better choice would be a Federal net royalty, although it shares with gross royalty the handicaps of extreme complexity and high collection costs. Therefore, the unclear "gross income" language in Section 410(a) of H.R. 322 must be replaced by one of two alternatives: either a specific reference to a tax rate (say, 2 to 5%) on "gross income for tax purposes under Section 613 of the Internal Revenue Code," (subject, importantly, to a rate cap of, say, 5 to 10% of "taxable income" under said Code)--or a "net proceeds" royalty calculated like the production tax under Nevada Revised Statutes 362.120. The

failure of H.R. 322 to identify clearly the intended type of royalty could leave Interior free to recreate the same problems it has created with "gross proceeds" valuation of Federal mineral lease production.

2. The land use planning scheme created by H.R. 322 is environmentally unsound. A far better choice would be to bring the Mining Law under the existing Federal Land Policy and Management Act (FLPMA). For hardrock mining purposes, you should apply FLPMA's scheme of ACEC's (Areas of Critical Environmental Concern) to U.S. Forest Service lands as well. Our assertion of the unsoundness of H.R. 322's scheme needs to be explained at considerable length and later will be, but it must be stated up front that its provision to withdraw outright all ACEC's from mining compounds the unsoundness.

3. The legislation needs to clarify and make explicit the claim holder's "right to mine" when the claim holder can design an approvable plan of operations, and it needs to avoid the implication in H.R. 322 that a land manager can "just say no" at virtually any time. More on these points later, too.

4. Singling out hardrock prospectors and miners as the only users of public lands to be subject to citizen suits is unfair and seems to them vindictive. A better choice would be to apply it to all, including timbering, grazing, recreation and power line rights of way, or to none. In any case, it doesn't belong in a mining Bill.

5. Creating and imposing a uniform set of Federal

reclamation standards in the face of existing State standards, most of which are high and strict, would be costly, confusing and wasteful. Since the terrain and other ecological factors vary greatly from state to state, a better choice would be to set an early deadline for the two states (Arizona and New Mexico) not yet having reclamation standards to enact ones as strict as, say, Montana's.

6. There are some fifteen excellent provisions in H.R. 322, ones that would reform and modernize the Mining Law in very desirable ways, and we hope you will retain them. I shall specify them in the concluding pages of this statement.

Let me turn now to two particularly critical problem areas, that is, two features of H.R. 322 that in our view very definitely need revision: first, the unclear provision for a gross income royalty, and second, the handling of the land use planning problem. The first is really an economic, not an environmental, issue; the second is an environmental issue with major economic implications.

First, then, as to royalty: There is widespread sentiment that the public should obtain an economic return from hardrock minerals extracted from public lands by private miners, and there is a growing feeling that there should be an economic return over and above the existing federal, state and local taxes paid by mining companies and their employees, and over and above hardrock mining's other economic returns to the public in the form of direct jobs and the making of domestically produced, vitally necessary minerals available to metal fabricators and many other civilian industries

and hence to every consumer--and to our defense industries.

Proponents of a Federal royalty argue that under the Mining Law of 1872 these minerals are taken "free" from public lands and that it is only "fair" for the public to receive an additional return, off the top, by exacting a Federal gross royalty. On the surface, this can seem appealing. After much study, however, we are convinced that looking to hardrock royalties as the primary return to the public would be counterproductive, indeed would be a serious economic and strategic mistake, and that gross royalties would even result in diminished net revenues to the Government, as well as substantial (and needless) harm to the nation's economy.

Let us initially examine the question whether it is true that these minerals are being taken "free." The bonanza mining era is long gone. Unlike oil, gas and coal, precious metals are widely disseminated and only found in scattered deposits, often in microscopic particles, usually requiring many tons of ore to be processed to extract a single ounce of metal. Unlike much Federal coal, sodium and phosphate, where many of the deposits have long been known, the private exploration effort and expense are essential to learn of the existence of hardrock deposits. All of the risks of exploration, and all of the enormous costs of mining and processing, are privately borne. In truth, not one ounce of metal is taken "free" from the public lands.

BLM Director-Designate Baca has complained that the lack of a Federal royalty is a disincentive for hardrock exploration on private and State lands [Sen. Hrg. 102-253, on S.433 and S.785,

June 11, 1991, at 121]. This cannot be an argument for destroying the incentive that promotes exploration on Federal lands. "Leveling the playing field" by imposing the royalty on Federal lands, too, will not spread the exploration more evenly. It will kill the incentive, the reward for discovery, that drives exploration on Federal lands.

Let me be clear on why a gross Federal royalty would be counterproductive. Hardrock mines today run on efficiency; their profit margins are small at best and always at the mercy of fluctuating world markets, and cost increases cannot be just passed through to the purchaser. Most U.S. mineral deposits have marginal ores. In fact, profitability is so closely dependent on costs that any increase would cause many marginal operations to close immediately and others to close sooner than otherwise. This kind of cost increase would shrink the recoverable ore body in every mine that stays open or is planned. The assessment of a high gross royalty, such as the 8% in the Bill or the 12½% in the Administration's budget proposal, would force a major part of the mining on Federal lands simply to shut down--or not to open. There would be no way to mine a large part of the marginal ores profitably, and a valuable resource would be wasted.

I scarcely need add that serious curtailing of domestic hardrock mining would reduce the wealth produced in the United States, reduce jobs (in a time of still-high unemployment), weaken the general economy (and potentially devastate local economies in rural areas where the mines exist), and, of course, increase

dependence on foreign supplies of minerals and worsen our balance of payments and competitiveness as a nation. Moreover, as an environmentalist who shares Vice President Gore's perspective on the global environment, I would deplore our shipping abroad environmental problems associated with mining to nations less able or willing than we to employ environmental safeguards.

All in all, the crippling of a vital domestic industry is too high a price to pay for a mistaken interpretation of what would be "fair" and for a delusory dream of what revenue might be generated. For an irony of the whole thing is that a gross Federal royalty would not even achieve the aim of its proponents to produce significant revenues. In fact, it would produce very little, if any, net revenue to compensate for its dangers--even if very much exploration and mining on the public lands somehow continued after its imposition.

One reason is that collecting it would be very costly, would necessitate an expanded bureaucracy, and would be extremely complicated. Congressman Rahall, in introducing his proposed "Minerals Exploration and Development Act of 1990" made this point very clearly. He said, "I believe that the federal government would spend more money than it would net in attempting to devise valuation guidelines, collect and audit royalty payments of the almost countless types of minerals, from the widespread to the extremely rare, subject to the mining law of 1872...."

Mr. Rahall continued, "Further, as a witness to the years-old struggles to devise federal valuation standards for royalty

purposes for what would appear to be a relatively simple commodity such as coal, I tremble to think of the dilemma in which Interior Department bureaucrats would find themselves in attempting to set forth valuation regulations, audit and collect royalties for minerals such as yttrium, let alone tungsten or zinc."

Mr. Rahall was absolutely right. The Government would be faced with the daunting and incredibly expensive task of determining how to apply a flat royalty in the face of the fact that the 1872 Mining Law exists for at least 80 economically significant minerals tracked (more or less) by the Bureau of Mines, with tremendous variations among them. Most hardrock minerals require, after mining and beneficiation, a lot of processing and even manufacturing to establish value. And no two may be alike in this regard. The processing-allowance issues in oil, gas and coal valuation pale in comparison to the complexity of the "allowance" problems there could be with hardrock ores.

There would be yet another problem, that of developing a bureaucracy to undertake the task of sorting out ownerships. The 120-year history of claim staking, with placer claims, lode claims, mill site claims and tunnel claims, each located as an independent unit, with differing sizes and orientations, has left the hardrock mineral estate a nightmare.

Sorting out ownerships has largely been left to the courts. Royalties could plunge the Government into sorting out thousands of ownerships at what could be an enormous expense. The attached claim map (ATTACHMENT F) is an example of the nightmare presented

by imposing a royalty on Federal lands in a mixed property involving extralateral rights. The ore body may be beneath unpatented ground, but mined as part of the extralateral rights pertaining to patented ground. This ownership complexity does not exist with respect to royalties or Federal coal, phosphate and potash. Adding burdens such as these would create not only a nightmare for the Government but serious uncertainties for industry and financing agencies and would even affect adversely MMS's already dubious royalty collection capacity for coal, oil, and gas.

Yet another consideration is that many royalty proponents have illusory notions of the amount of minerals--and hence potential revenues--involved. Federal royalties could be levied only on as-yet-unpatented producing claims and on as-yet-undiscovered minerals. The former are but a fraction of current national production and largely in a single State currently, and the latter are of course unknown, with gross royalty making them less likely to be explored for.

Considering all this, quite aside from the unfavorable general economic impacts identified earlier, a Federal gross royalty clearly could not be a significant new source of net revenue.

Recognizing the powerful, though we believe erroneous, urge to enact a royalty, we turn our focus to the kind of royalty that will do the least damage to existing mines and the exploration that would find new ones.

Many of you will recall that in the full Committee markup of H.R. 918 last summer, an amendment was narrowly (23-21) adopted

(over Mr. Rahall's objection) that would have imposed an 8% gross royalty and that when the Bill was debated on the House floor toward the end of the last Congress, an amendment calling for a 12½% gross royalty was put forward--and soundly defeated. (In each case, the royalty would have been added on top of the land rental that was in the Rahall Bill--and still is in H.R. 322.) During the debate, in urging defeat of that amendment, Mr. Rahall indicated that he and others intended to propose an amendment calling for a net royalty of some 5%. They never got the chance, because debate was cut off at that point owing to adjournment pressures.

We urge Congress to consider the counsel it has previously received. In 1991, Interior Solicitor Designate Leshy testified that "a modest royalty" would not "have any effect in hardrock mining in this country" (our emphasis). Sen. Hrg. 102.253 on S.433 and S.785, June 11, 1991, at 231. We believe that H.R. 322 and the Administration's budget proposal are clearly not modest; we believe such royalties would have a seriously adverse effect. The current bill is rigid and simplistic in borrowing high rate, gross royalty concepts. Other methods of "fair return" to the public are much more appealing: for example, Nevada's system of net income taxation of minerals extracted in the State.

Let me stress again that what is desirable is net return, above collection costs and other losses.

Should any royalty be adopted, however, three provisions are essential to make it workable:

. authority to reduce the royalty rate in order to conserve

the resource, by enabling recovery from low grade ores of minerals that would otherwise be lost.

. provision for royalties paid to be credited against rentals owed.

. an exemption for "mom and pop" operations (those involving less than 800,000 in gross revenues per year, as was adopted in the FY93 Interior Appropriations Act) from royalty.

Now to our second major concern about H.R. 322. As an environmentalist, I have been surprised and puzzled by the Bill's approach to land use planning. No matter how well intentioned it may be, it understandably raises the hackles of prospectors and miners, large and small, while actually going at the environmental problem the wrong way. Te right way we have set out in ATTACHMENT B, "ACEC IN, UNSUITABILITY OUT."

This subject is complex and important. Before going further, however, let me make two bottom-line points: identifying, up front, areas with environmental values deserving of special protection is both wiser and more possible than trying to identify mineralized areas prior to exploration. Moreover, creating a whole new system of public land management, just for mining, in addition to FLPMA for BLM and FRRPA for the Forest Services, is illogical, impractical and incredibly wasteful, and the "unsuitability review" in Section 204 is the wrong approach.

Therefore, we recommend that you bring hardrock mining under FLPMA. This can produce a win-win balance for the nation's environment and the nation's need for minerals, because the use of

the environmental, ACEC approach of FLPMA can get us away from the all-or-nothing, all-closed or all-open, management of mining on the public lands. Access, which is vital in a self-initiation system, would be improved, while the protection of especially sensitive environmental values would be assured.

The Bill's handling of the admittedly difficult but very important problem of reconciling land use planning and surface management with the right to mine is just unsatisfactory. We are dealing here with a mining law, while a number of other statutes deal with environmental protection.

This Committee over the years has heard from the mining community on the need to improve access to public lands for mining. The Committee has also heard from the environmental community on the inadequacy of Federal land management to protect environmentally sensitive areas. In many ways this is the debate that led to FLPMA in 1976. Our own research and discussions have explored this debate in the context of land use planning, looking for a win-win situation where access to mining can be increased, while at the same time affording additional protections to certain sensitive areas. There are several principles that we think must be considered.

First, trying to plan directly for or against mining on all multiple use lands is a futile exercise, since the location of the hardrock mineral resource, unlike forage, wildlife, water and recreation resources--and even unlike coal--is unknown while one is planning. Section 204(b) of the Bill, for instance, demands an

impossible instant identification of mineral lands. Rather, the approach should be to identify surface resources that are sensitive enough in that planning district that the agency plans to protect them from conflicting land uses, including mining. This is why "areas of critical environmental concern" (ACEC's) are a preferable planning designation, or tool: designation is case-specific; the areas are controlled but not closed to multiple uses; and the restrictions can and should be applied to other commercial or impacting land uses, not just mining.

The second key principle is certainty. If the explorationist or developer knows the restrictions up front, when going into a planned area, the risks of the agency's new "right to say no" are known and can be dealt with. What is unacceptable is introducing the "right to say no" at the time of approval of the plan of operations, after investment in exploration, ore-body delineation and mine design. Section 204(c)(2) of the Bill is unacceptable for this reason. If the "right to say no" is not in the land use plan, adopted in a public process with respect to resources in certain areas in the planning unit, it should not be introduced at the time of approval of the plan of operations. The only way such a provision would be acceptable is if it clearly provided for compensation to the miner for the value of the property on which mining is now going to be denied for a reason not known up front in the land use plan.

Third, the land use planning "right to say no" cannot just be an expansion of the withdrawal system. If a mining use

(exploration, even development) can be undertaken consistent with the management restrictions applicable to the ACEC, it must be allowed. The "right to say no" that would exist on these designated "sensitive lands" should not be a "compulsion to say no", if development could occur consistent with the land use plan and the constraints necessary to manage the ACEC lands. Further, if exploration could be undertaken consistent with ACEC management, the results of that exploration could be taken into account in a land use plan amendment. Both of these types of flexibility would be preferable to the current withdrawal system.

Fourth, the Bill must recognize that maximum access is essential to the health of the industry. If the lands are not sensitive, mining frequently is the highest and best use of that very small amount of land that contains a commercial ore body. Thus, authorization to "say no" to mining on sensitive lands must not be seen as a restructuring of public land uses to "ratchet" whole new categories of land into designation as sensitive areas. Especially in light of other provisions of the Bill, an aggressive review of administrative withdrawals should open lands that are now withdrawn for fear of surface patenting or for lack of the right to "say no" to mining on "sensitive" lands. When these processes (planning restrictions and withdrawal review) are complete, it should be possible to have greater access for responsible mineral exploration and also broader protection of specific nonmineral resources--a win-win situation.

Fifth, the transition to such a system must be fair. New

restrictions should not be imposed without lifting old unnecessary restrictions. We suggest the Bill provide that, in any planning unit, the new sensitive lands or ACEC designations not be effective to change locators' rights unless the administrative withdrawal review is completed and effective at the same time. After all, under existing law all lands that Congress and the land managers currently believe should not be subject to the "right to mine" under current law are either withdrawn or under a protective management standard (such as "nonimpairment" in Wilderness Study Areas). In addition, resources of special value (e.g., endangered and threatened species) are protected under separate legislation of general applicability.

Land use planning should be used to introduce flexibility into the hardrock situation--so all lands are not simply totally withdrawn or totally open. At the same time, planning must be fair and provide certainty, so that a plan of operations is not subject to denial, or attempts to reject it, for land management reasons that were not stated as an existing basis for rejection when the investment in discovering and developing the ore body was made.

Now let us examine other problems in H.R. 322.

The Bill leaves uncertainty regarding the nature of a claimant's rights and property interest; for instance, ownership of the mineral is not clearly set forth (is there a compensable property interest?); the right to mine is not clearly expressed; and access rights are not expressly stated. PRA ATTACHMENT E fixes this.

The Bill adds a level of bureaucracy, namely, Interior's Office of Surface Mining, to be involved in administering hardrock mine reclamation, and this is just not desirable, in our view, because it would better be left to the States and the Federal land management agencies as already explained.

While the Bill's provisions on reclamation and bonding are in line with the current practice of many companies, what are needed are streamlined procedures. This includes specific time periods for agency action on permits.

Next, the Bill would withdraw from mining, without traditional mineral studies, BLM Wilderness Study Areas and other Study Areas. This would create an unwise legislative policy, not of opening or closing lands through proper land use planning or Congressional action on the specific land, but of simply closing them as a general class even though the "nonimpairment" provision of FLPMA has protected Wilderness Study Areas adequately since 1976.

H.R. 322 also appears to change the fundamental BLM land management standard from the current "unnecessary and undue degradation" standard to "minimize adverse environmental impacts." No one is sure what is intended. The deletion of the "unnecessary and undue degradation" BLM standard entirely is read by some to imply that the land manager can prevent any degradation, i.e., minimize impacts by prohibiting mining. Such a provision is of course a fundamental threat to mining; FLPMA expressly recognized that there may be necessary, or due, degradation in mining, and, for that matter, in all other multiple uses of public land. The

only way this change is benign is if Section [201(a)] of this Bill were intended simply to make the current Forest Service standard for action on plans of operations applicable both to Forest and public multiple use lands. This Forest Service standard recognizes the right to mine, and observes the distinction between minimizing and prohibiting adverse impacts. In other words, under the Forest Service standard one cannot minimize impacts by prohibiting mining.

Some miners and environmentalists agree that an appropriate standard could be, "prevent unnecessary degradation and minimize adverse environmental impacts." The important thing is to distinguish between minimizing and prohibiting impacts. This formulation is what appeared in Subcommittee Chairman Vento's H.R. 1096 in the 102nd Congress and is acceptable as long as the Committee Report explains its derivation and meaning consistent with this understanding. Our ATTACHMENT D resolves this point.

At this point, may we suggest that you include two new provisions that will improve the Bill significantly:

(1) a provision applying the revised Mining Law to "acquired lands"--see ATTACHMENT C--so that there will one system for hardrock mining nationwide; and

(2) A set of "Findings" that could serve two important purposes: it could state Congress's recognition that this is a mining bill, intended to establish a system that not only authorizes but encourages mining, and it could state the Committee's goals, against which other provisions of the bill can be measured. From a mining point of view,

such a set of Findings would include recognition of certain facts and principles which are included in ATTACHMENT A to this testimony.

In conclusion, I want to set out in summary fashion fifteen excellent provisions in H.R. 322, provisions that would reform the old Mining Law in ways we, and many others, think highly desirable.

These are:

(1) Retention of the principle of self-initiation, and rejection of a leasing system, to govern exploration and claim-staking. This is of fundamental importance to a viable hardrock mining industry for this country.

(2) Elimination of the surface patent, so that the surface would remain in public ownership after mining. This is of great importance to the environmental community. We recommend a provision for a patent, based on a discovery, limited to minerals only.

(3) Creation of a single type of claim, of forty acres, tied to land surveys, in place of the old lode and placer claims and tunnel and mill sites, and elimination of extralateral rights and "uncommon varieties" claims--while, in fairness, preserving the original configuration and rights of existing claims. This will help simplify both the Mining Law and its administration.

(4) Inclusion of Section 106 making for further simplicity on the ground by having the new law supersede

State laws (though we continue to urge that State reclamation laws not be superseded).

(5) Elimination of the confusing concepts of "pedis possessio" and "discovery" as requirements to hold a claim during the exploration period, and the substitution of a secure type of tenure for claim holders. Although many in the mining community have opposed this change, we believe this is because their spokesmen had generally chosen to oppose any change in the Law and failed to concede the advantages of particular changes such as this.

(6) Very importantly, the provision in Section 201(b)(2)(B) for a notice approach for initial test drilling, rather than requiring an approved plan of operations at that stage. After all, the essence of self-initiation is more than simply being allowed to put stakes in the ground.

(7) Creation of an Abandoned (hardrock) Minerals Mine Reclamation Fund.

(8) Strengthening, as environmentalists have urged, the amounts of assessment work required to hold a claim, i.e., requiring increased diligence to reflect a bona fide exploration effort, rather than virtually condoning the practice of just sitting on a claim indefinitely. However, with great respect, we must tell you that the dollar amounts in H.R. 322 are unrealistically high. It

would be far better to amend Section 104 to stop the escalation at $15 per acre, beginning the eleventh diligence year.

(9) Imposition of a land rental, and optional cash payments, in lieu of land-disturbing assessment work, but only after an initial exploration period of, say, three years in order to discourage pure speculation. Rental of the surface is superior as a revenue-producer to imposition of a royalty (which there are sound reasons for omitting, as has been seen). However, rent plus royalty, as provided in H.R. 322, is bad policy indeed. And adding the holding fee of $100 per claim currently provided in Interior's Appropriations Act makes it that much worse.

(10) Inclusion of exploration, reclamation and environmental studies in an expanded definition of assessment work. This has advantages to all. Among other things, it will help reclaim and improve previously mined areas and encourage direct environmental improvement by exploration and mining companies.

(11) Provision of a liberalized group assessment work feature for contiguous claims. This would be welcomed by explorationists. However, the group should have some limit, say, 1000 acres of reasonably compact size that would include all claims, contiguous or not, that benefit the exploration effort. This would prevent

an existing producer from spreading assessment work over an entire mineral trend. Excess expenditures in one year might be carried forward for a period of time, say three years.

(12) Imposition of penalties for knowingly and willfully filing false diligence statements.

(13) Replacement of the arbitrary "five-acre rule" on BLM land with the more general provision of allowing initial test drilling under a notice, cited in (6) above.

(14) Provision for review of lands administratively withdrawn from mining exploration. This withdrawal review will be welcomed by the mining industry and is also in the national interest. Future complete withdrawals would become unnecessary and unwise except in very special situations.

(15) Provision for each Federal land agency to take minerals management responsibility for its own lands.

I believe that most of these fifteen points are either self-explanatory or have been discussed at sufficient length in earlier hearings, so I shall not elaborate on them further.

Thank you.

ATTACHMENT A

AMENDMENT TO H.R. 322

"Findings"

Amendment ___. Section 101 of the Mineral Exploration and Development Act of 1993 is amended by inserting a new subsection (a) and renumbering the subsections accordingly, with the new subsection (on page 2, line 4) to read as follows:

"(a) Congress finds:

"(1) Hardrock mining makes a substantial contribution to the nation's tax and employment base, especially in rural counties and in the western states where the United States is the principal landowner;

"(2) the hardrock mining industry and its domestic operations make a significant contribution to our standard of living and to the United States balance of payments;

"(3) hardrock mining has an essential siting requirement that distinguishes it from other industrial activity--it must be sited where the ore is;

"(4) real access and self-initiation, and reward for discovery of commercial minerals, are necessary incentives to maintaining a healthy hardrock mining industry;

"(5) mining requires adverse environmental impact, and mine regulation cannot prevent or prohibit all adverse impacts, but should control and mitigate impacts;

"(6) federal land use planning should be employed to protect significant resources that deserve protection from all public land uses, and should not be employed to discriminate against mining as a public land use; and

"(7) regulation of mining must be cost beneficial, both on the local and the national level; recognizing that (A) on the local level, on public, multiple use lands mining is often the highest and best use of the land; and (B) on the national level, regulation under the bill should not adversely affect the competitive position of the hardrock mining in the United States, or otherwise encourage the mining industry to move offshore."

ATTACHMENT B

AMENDMENT TO H.R. 322

"ACEC's In, Unsuitability Out"

Amendment ____. (a) Subparagraph 201(g)(1)(D) of the Mineral Exploration and Development Act of 1993 is amended by adding before the period (on page 33, line 23) the following, ", or, if the area is so designated, the right to mine is protected under section 204(d) of this Act".

(b) Section 204 of the Mineral Exploration and Development Act of 1993 is amending by deleting the entire text and substituting the following:

"SEC. 204. LAND USE PLANNING; AREAS OF CRITICAL ENVIRONMENTAL CONCERN

"(a) PLAN AMENDMENTS. -- The Secretary shall amend each land use plan under his or her jurisdiction to implement the provisions of this section, consistent with the provisions of Section 202 of the Federal Land Policy and Management Act of 1976 or the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended, as appropriate. This land use plan amendment should occur in the existing planning cycle in planning units where there is little or no exploration or mining under this Act, and should occur as an amendment to implement this section in planning units where there is significant exploration or mining under this Act. The Secretary shall, after notice and comment, publish a tentative schedule and a classification of planning units for purposes of these amendments, taking into account the policy of this subsection.

"(b)(1) PLAN DECISIONS GENERALLY. -- Each land use plan amendment under this section shall examine the possible designation of Areas of Critical Environmental Concern in which the provisions of this section would apply because of a planning decision to protect a specific resource by such designation. Each such amendment shall also examine any such Areas already designated.

"(2) The resource values that may support such a designation include those that have supported such designations made prior to enactment, those listed in section 522(a)(3) of the Surface Mining Control and Reclamation Act (30 U.S.C. 1272(a)(3)), and other significant resource values identified in the land use plan as supporting such a designation.

"(3) The Secretary may by rule establish a list of resource values that land managers may consider as supporting the designation of such an Area; Provided, however, that in no such rule may the Secretary compel land managers to make such a designation in all cases, unless required by other federal law; and provided, that land managers must have discretion to determine that a given resource, because of conditions of climate, abundance, replaceability, or otherwise, does not support such designation in any specific case in that planning unit.

"(4) In designating any such Area, the plan amendment shall establish the conditions for mitigation, or the conditions for prohibition, of otherwise lawful multiple uses of public lands based on impacts on the identified resource.

"(5) Any such designation, and any conditions for use of such Area, shall be subject to modification or termination in any subsequent revision of the land use plan, and any land use plan revision may include new designations of such Areas or conditions for use of existing Areas.

"(c) EFFECT OF DESIGNATION GENERALLY. -- (1) The Secretary may not, subject to valid existing rights, approve any use of federal land that would violate the conditions adopted in the land use plan for any designated Area of Critical Environmental Concern.

"(2) The Secretary shall not, because of such designation, disapprove any use of federal land that may affect the designated Area so long as that use is consistent with the conditions of replacement, mitigation, or allowable impacts adopted for such Area in the land use plan.

"(d) EFFECT OF DESIGNATION ON MINING. -- (1) On federal land subject to this Act and not designated an Area of Critical Environmental Concern, the right to mine in section 102(b) of this Act, and to have the Secretary approve the plan of operations, is not limited by this section.

"(2)(A) On federal land designated an Area of Critical Environmental Concern, the holder of a claim located after such planning decision, and the holder of a claim located prior to such designation but for which no plan of operations under section 201(c) has been submitted, shall be subject to the conditions prescribed in the plan with respect to such Area.

(B) On federal land designated an Area of Critical Environmental Concern after location of the claim(s) and submission of a plan of operations under section 201(c), the claimant shall be subject to mitigation conditions adopted in the land use plan; provided, however, that a condition resulting in prohibition of mining shall not be imposed on the claimant in such circumstances unless the Secretary compensates the claimant from the Fund established and maintained under section 301 of this Act for the value of the property taken by such prohibition."

"(e) RELATION TO WITHDRAWAL REVIEW. -- (1) As part of the first land use plan amendment or revision under this section, the Secretary shall review all administrative withdrawals of land from location of mining claims to determine whether revocation or modification of such withdrawal to allow the location of claims under this Act would be appropriate in light of:

"(A) the existence of the authority under this section to protect, or mitigate impacts to, a resource from other multiple uses including mining;

"(B) the land management requirements of section 201 of this Act; or

"(C) the limitation of section 107 of this Act.

"(2) The decision to revoke or modify any withdrawal reviewed under this section shall be made in the same land use plan amendment as designates, or sets conditions for managing, any such Area under this section. The Secretary of the Interior shall complete the ministerial withdrawal action under section 204 of the Federal Land Policy and Management Act of 1976 to implement revocation or modification decisions made under this subsection at the same time as, or as closely in conjunction as possible with, the adoption of the land use plan amendment."

(c) Section 205 of the Mineral Exploration and Development Act of 1993 is amended (on page 77, lines 21-23) by deleting paragraph 205(a)(4) and renumbering the succeeding paragraphs accordingly.

(d) Subsection 301(a) of the Mineral Exploration and Development Act of 1993 is amended (on page 81, line 23) by adding a paragraph (8) to the new subsection 422(a) of the Surface Mining Control and Reclamation Act of 1977, to read:

"(8) As provided in section 204(d)(2)(B) of the Mineral Exploration and Development Act of 1993, payments to compensate a claimowner whose plan of operations is disapproved because of a prohibition in a land use plan not in effect at the time of submission of a plan of operations for the claim(s) under section 201(c) of that Act."

EXPLANATION. The Committee must provide a relatively neutral land use planning provision that is prospective, that is, it must not be designed to prohibit the development of minerals discovered prior to enactment, or discovered before the protective land use planning decision is made. A neutral and prospective system can be designed using the current FLPMA concept of the "Area of Critical Environmental Concern" (ACEC). Using this provision the amendment provides for a land use planning decision that:

- o is prospective, recognizing variances for already-discovered deposits where regulation, not prohibition, should be the rule
- o plans to protect the identified resource value from destruction or harm from any multiple use activity otherwise lawful on public lands--powerlines, grazing, recreation, other mineral development, etc. This way planning protects significant resources, and

sets conditions for potentially conflicting use, rather than simply trying to preclude mining.

o allows flexibility, i.e., it promotes an outcome somewhere on the spectrum other than the extreme of no consideration of mining or the extreme of destruction of the other resource. ACEC management can condition destruction of the resource (wildlife habitat, recreation site) on a replacement project yielding net benefits (more habitat elsewhere and mining jobs and revenues) in permitting. "Unsuitability" perpetuates a 1970's "I win-you lose" mentality beyond both industry and the Congress must move.

o allows withdrawal review to consider opening lands under this new, flexible land management possibility of allowing some kinds of mining, or mining with mitigation, on land that now is totally closed to prospecting and consideration for mining by withdrawal.

o if and when the new "right to say no" is exercised, there is compensation for those who have discovered a mineable ore body and initiated the steps to do so prior to the designation of the land as an ACEC.

ATTACHMENT C

AMENDMENT TO H.R. 322

"Acquired Lands and Eastern Public Domain Lands"

Amendment ___. Section 102 of the Mineral Exploration and Development Act of 1993 is amended by adding a new subsection (c) (page 8, line 15 and following) to read as follows:

"(a) Subject to valid existing rights (including mineral prospecting permits and leases), the provisions of this Act shall apply to all acquired lands of the United States that are managed by the Bureau of Land Management or the Forest Service for multiple use, to the same extent as those lands would be subject to the operation of this Act if those lands were public domain lands.

"(b) Subject to valid existing rights, the provisions of this Act shall apply to all public domain lands managed by the Bureau of Land Management and the Forest Service, that have not been subject to the operation of such law for whatever reason (including but not limited the fact that such lands are located in a state east of the 100th Meridian to which the Mining Law of 1872 has not previously applied), to the same extent as those lands would be subject to this Act if those lands had previously been subject to the operation of the Mining Law of 1872.

"(c) Subsections (a) and (b) of this section shall take effect on the first day of the first month that begins after two years from the enactment of this Act. The Bureau of Land Management and the Forest Service shall review all such lands within this two-year period and the Secretary of the Interior shall, under section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714, make, modify or revoke withdrawals affecting such lands as may be appropriate to open, or to close, such lands to the operation of this Act."

EXPLANATION: This section puts exploration and development of hardrock mineral resources on the millions of acres of acquired lands managed by the Forest Service and BLM for multiple use purposes on the same footing as public domain lands, with the same incentives for self-initiation and rewards for discovery and development applicable on public domain lands. It also opens to the operation of the new law those several areas, chiefly in the upper Midwest, where public domain land with some hardrock mineral potential has not been subject to any viable disposition regime. These openings of land would not open land withdrawn by Congress as wilderness, for example, or designated for exclusive use or management by any Order or statute that precludes mining or hardrock mineral leasing. Finally, this section has a delayed effective date that will allow the two land management agencies time to assure that these newly available lands are properly classified and either protected or opened when the section becomes effective.

ATTACHMENT D

AMENDMENT TO H.R. 322

"'Unnecessary degradation' Land Management Standard"

Amendment ___. Section 201(a) of the Mineral Exploration and Development Act of 1993 is amended by inserting (in page 26, line 3) the words "prevent unnecessary degradation," after "conducted so as to" and before "minimize adverse environmental impacts".

EXPLANATION: The bill as introduced omits any use of the BLM land management standard in section 302(b) of the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. 1732(b), that the Secretary act "to prevent unnecessary and undue degradation" of public lands, and the amendment continues the standard. Without this amendment, there is an implication that the "unnecessary and undue degradation" standard would continue to apply to all other public land uses, but not hardrock mining. There should not be different land management standards governing different activities on the same multiple use BLM lands. And there should not be different management standards applying to the same activity on BLM and Forest Service lands. Having both standards in the bill continues the usage and meaning of the phrases applicable to BLM lands under FLPMA, and national forest lands under Forest Service authority, and recognizes their equivalence. The standard in the amendment uses Chairman Vento's language from H.R. 1096 in the 102d Congress.

If this amendment is not made, then the Committee report should establish that this section 201(a) does not change the standard applicable on either class of lands; rather, it recognizes that the two separate phrases the two agencies had used are effectively one and consistent, and the bill simply uses one phrase so that consistency will be maintained. This language should be in the report:

"The bill as introduced omits any use of the BLM land management standard in section 302(b) of FLPMA, that the Secretary act 'to prevent unnecessary and undue degradation' of public lands. The Committee was asked to reinsert this standard in section 201, and did not do so because it was not necessary to do so. That is, the Forest Service's existing regulatory standard, used in the bill, and the BLM's FLPMA standard mean the same thing and have been consistently applied by the two agencies. Both agencies recognize that adverse impacts to surface resources occur both while exploration and mining are being conducted, and in final reclamation, where not all impacts can or should be reclaimed to prior condition. Both agencies recognize, and this bill continues the law, that "minimize" does not mean "prohibit," and that management means preventing adverse impacts that are not necessary to a properly conducted exploration or mining operation given the type of ore, topography and circumstances. If prohibition of mining is necessary by reason of conflicts with other resources, section 204 of the bill is the section under which prohibition of mining is to be effected, not under the section 201 land management standard."

ATTACHMENT E

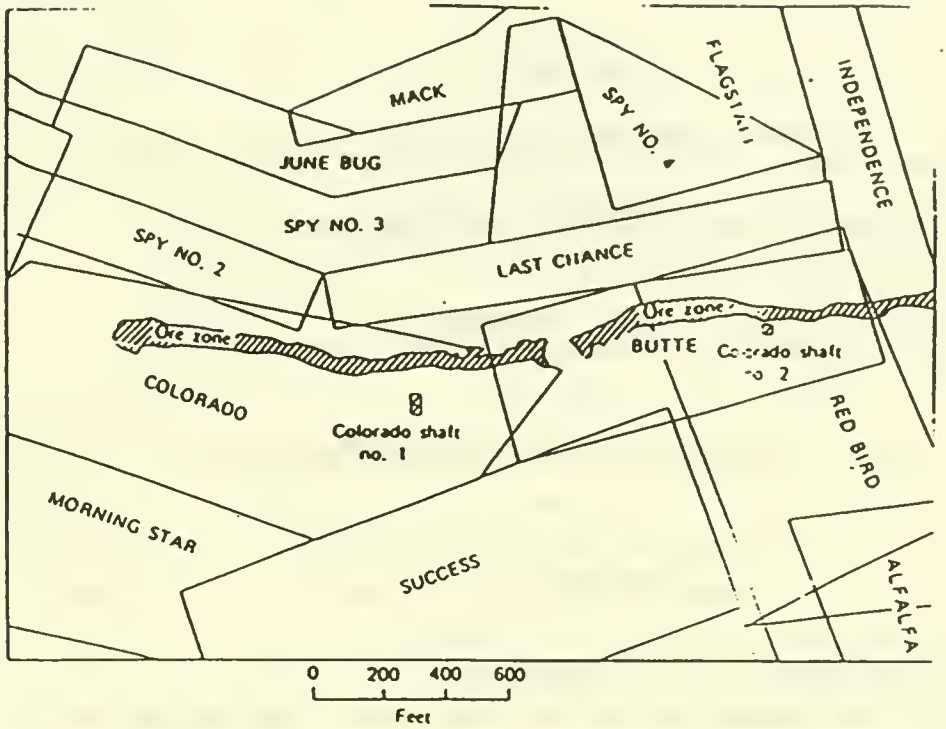
AMENDMENT TO H.R. 322

"Improved Definition of Locator's Rights"

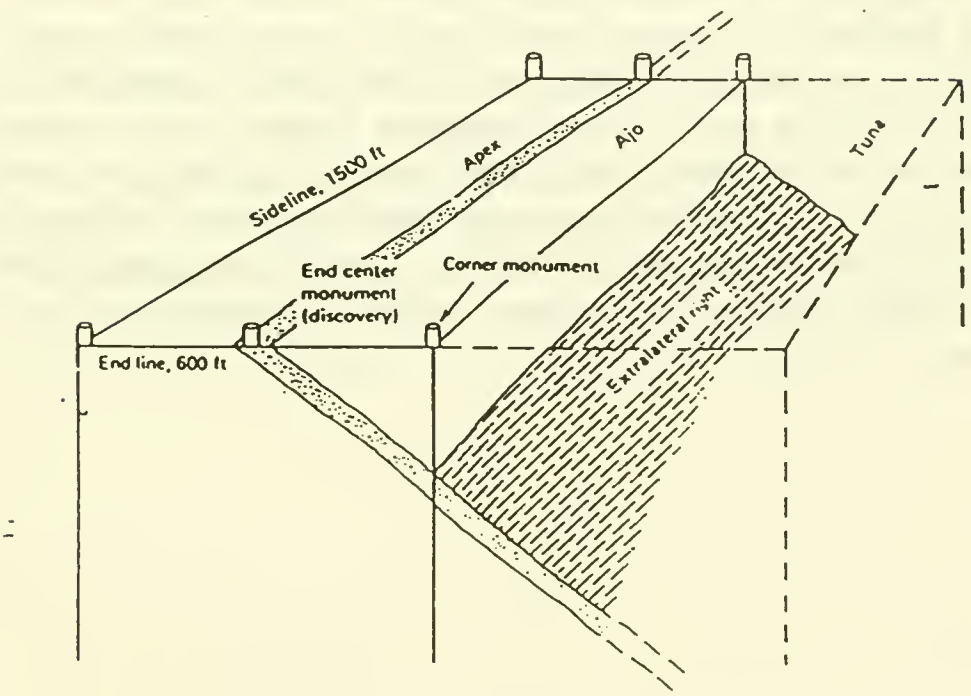
Amendment ___. Section 102(b) of the Mineral Exploration and Development Act of 1993 (page 8, lines 8-14) is amended to read as follows:

"The holder of a mining claim located or converted under this Act and maintained in compliance with this Act shall have the exclusive right to explore for, develop, mine, produce, and dispose of all minerals subject to location within the boundaries of the claim, the right of access to the claim, and the right of possession and use of the claimed land for mineral activities, and the right of ingress and egress to such lands for such activities, subject to the rights of the United States under section 108 and Title II."

ATTACHMENT F



Mining claims in a part of the East Tintic district, Utah.



The apex rule—extralateral rights. The Ajo claim includes the right to mine the vein beneath the Tuna claim.

from *Exploration and Mining Geology*
by William C. Peters

National Association of Mining Districts

Testimony of:

Robert A. Sanregret, A.B., M.B.A., J.D.
Executive Director of The NATIONAL ASSOCIATION OF MINING DISTRICTS.

In Opposition To HR.322
("The Mineral Exploration and Development Act of 1993")

Before The

U.S. HOUSE OF REPRESENTATIVES
Subcommittee on Energy and Mineral Resources

of the

Committee on Natural Resources
Hon. Richard H. Lehman, Subcommittee Chairman

at

1324 Longworth House Office Building
Washington, D.C.
March 11, 1993 at 9:45 A.M.

Mr. Chairman and Members of the Subcommittee:

Thank you for allowing the National Association of Mining Districts ("NAMD") to present its views in opposition to HR.322 ("The Mineral Exploration and Development Act of 1993"). NAMD is joined by the Pacific Mining Association, the Western Mining Council, and many others in their opposition to HR.322, and in opposition to other efforts to repeal the current U.S. Mining Law's efficiently-operating incentive system of mineral exploration and development. HR.322 would repeal the Mining Law and would replace it with a burdensome acreage-based "lease/fee system" consisting of restrictive fees and regulations tantamount to the nationalization of the U.S. mineral exploration and development industry in the Western United States.

I. INTRODUCTION

The National Association of Mining Districts ("NAMD") is an association of Mining Districts as authorized under the enabling clause of the United States 1872 Mining Law (30 United States Code, sections 21 et seq.), as follows:

> "Mining District Regulation by Miners: . . . The miners of each district may make regulations not in conflict with the laws of the U.S., or with the laws of the state or territory in which the district is situated, governing the location, manner of recording, amount of work necessary to hold possession of a mining claim. . .[markings on the ground, records, information needed on location notices], etc." 30 U.S.C., section 28.

The NAMD represents the thousands of mineral prospectors ("explorationists") and mineral developers, active today throughout the United States, including on the public land in the Western United States. For purposes of identifying the NAMD and its programs, a copy of the "NAMD 1992 Report on Programs and Activities" is attached to this statement.

Most major mines and most major mineral deposits in the United States have been discovered by independent individual mineral prospectors under the U.S. Mining Law.

The U.S. Mining Law consists of hundreds of statutes, regulations and court decisions dating from 1807 to the present time. The 1872 General Mining Act is one of about 65 separate mining statutes, and is an important part of the U.S. Mining Law; but it is erroneous to refer to the current composite U.S. Mining Law as "an old outdated statute," because there are hundreds of interrelated "Mining Laws" (statutes, regulations and court decisions) which have been continuously amended and updated, resulting today in the present clearly-defined and predictable set of groundrules for efficient private mineral exploration and development on public land.

The U.S. Mining Law operates today to efficiently locate, identify and

develop minerals on public lands, and has been aptly referred to as "the world's premiere remaining example of an incentive-based free enterprise system at work." The United States needs mineral exploration and development under the Mining Law today more than ever before. For example, the former Soviet Union lost the "Cold War" largely because we were more productive, particularly including our efficient mineral exploration and development under our Mining Law. The U.S. remains strong today, despite the fact that the former Soviet Union, Russia, Mainland China, and other countries have very substantially more mineral potential and mineral reserves than the United States.

Russia, Mexico and China have many times the mineral potential of the United States. These foreign powers are slowly but surely figuring out the free enterprise system and our incentive-based Mining Law; and when they do, they will be in a position to "bury us" economically, as they have been unable to do militarily. This will happen, unless we keep our own mineral exploration and development industry alive and well under the present Mining Law. HR.322 would devastate the incentive-based mineral exploration and development in the United States.

The efficient development of minerals under the U.S. Mining Law has been a direct and significant reason that the United States has remained economically and militarily strong from the days of the Civil War, through both World Wars, to today; and the U.S. Mining Law should not be repealed by HR.322.

Mr. John A. Knebel, president of the American Mining Congress, stated on ABC's "Prime Time Live" that the United States would be a third-rate power today if it were not for the effective mineral exploration and development under our incentive-based U.S. Mining Law.

Today the United States, and most of the world, are absolutely

subservient to Russia and South Africa for virtually all of our chromium, rhodium, platinum, and other essential minerals. It is a distinct possibility, if not a probability, that the United States and many other countries will be subject to political and financial extortion by unfriendly foreign mineral cartels, which would be much more serious and damaging to our productivity and to our national security than were the envisioned oil crises of the 1970's and of 1991.

In fact, to more fully develop our own limited mineral potential, the NAMD joins with the Western Mining Council, the Pacific Mining Association, and many others in strongly recommending that the incentive-based U.S. Mining Law not be destroyed by HR.322, but, rather, that the U.S. Mining Law be expanded to specifically include the following:

(a) Federal acquired lands in all states and territories; and

(b) Deep seabed lands to the 200-mile limit.

Our valuable national resource of efficiently utilizing the self-initiation and incentive of private citizens under the Mining Law to explore for minerals and to develop mines at no cost to the public should not be destroyed, as it would be under HR.322.

II. THE PRESENT MINING LAW AND MINERAL PATENTING WILL ASSURE THAT THE U.S. HAS A SECURE AND STABLE DOMESTIC SUPPLY OF HARDROCK MINERALS.

The incentive system of our present Mining Law encourages citizens to conduct mineral exploration and development on the U.S. public lands. This system operates to effectively locate mineral deposits, and our Mining Law

permits and encourages the locator to either develop a mine or to identify and "inventory" the minerals for future extraction.

In 1955 one of the many amendments to the Mining Law initiated the concept of "Multiple Use" of public lands. The Multiple Use concept has operated efficiently on public lands in the Western U.S. over the last 27 years. Today a mineral prospector or miner does not have the exclusive possession and use of his mining claim until the claimholder has patented the land by proving the presence of a substantial mineral discovery and a development plan that is feasible and reasonable.

Mineral patents have been the subject of substantial recent discussion, and patenting seems to be widely misunderstood. Mineral patenting is the incentive and protection provided to good faith mining claim locators. This protection is the exclusive right to minerals given to the U.S. citizen who discovers a mineral deposit, and the citizen's right to acquire title by a patent. The mineral prospector's incentive and reward for making a valuable mineral discovery is the prospector's assurance under the Mining Law that he may develop the mineral deposit, and get a mineral patent. Under the present system there is no up-front subsidy by the federal government, no "subsidy payment" for not prospecting, and there is no payment for not producing. Only a very small percentage of mineral exploration prospects result in profitable mines. During the mineral prospector's exploration and development activities, the prospector is specifically prohibited from unduly degrading the land or the environment, and the land must be "reclaimed" after the minerals have been mined.

The NAMD, and all responsible mining associations, strongly oppose the illegal use of mining claims and fraud in patent applications. The U.S. Mining Law and mineral patent system should not be faulted and destroyed

just because of the bad faith or fraud by an occasional dishonest patent applicant (which is almost invariably exposed, and no patent issued). Such hasty action would be like closing down all of the Interstate Freeways because they are occasionally wrongfully used by drunk drivers or bank robbers.

The unrestricted mining methods of the 19th Century are a thing of the past. Today U.S. mining is already subject to more federal and state regulations and environmental controls than anywhere else in the world.

Without the incentive, access and security of the U.S. Mining Law we would not have our present mineral exploration and development system operating efficiently in the United States today. The existing incentive-based system of mineral exploration and development under the existing Mining Law will continue to effectively locate, identify and secure a stable domestic supply of minerals, as it has for the past 150 years.

III. UNDER HR.322 THE UNITED STATES WOULD NOT HAVE A VIABLE MINING INDUSTRY IN THE YEAR 2000 AND BEYOND.

Despite the title of HR.322, the "Mineral Exploration and Development Act of 1993" would stop and destroy most United States mineral exploration and development by its heavy-handed acreage-based "lease/fee system," tantamount to nationalization. An oppresive royalty of 8% to 12.5% would make mine operation impossible for most of the present already over-regulated U.S. mining operations The bland analogy to oil and coal royalties is inaccurate and misleading, simply because the mineral occurrances and mining operations are vastly different, in that oil and coal occur in relatively large pools or beds, with the cost and percentage

of "waste" a minimum.

Under HR.322, or under any substantial "royalty system," a substantial amount of our present incentive-based U.S. mineral exploration and development would stop, because most individuals and exploration companies would be put out of business by the restrictive additional fees, royalties and regulations under HR.322. Today's mineral exploration and development by thousands of individuals and firms would be difficult or impossible under HR.322.

If U.S. mineral prospectors are prevented from discovering and developing new mines under HR.322, the direct result would be that when the present mines are exhausted, only a few of the financially strongest mining companies would be able to develop new locations under HR.322's the array of existing and new HR.322 "anti-mining" laws and regulations. The result would be the exporting of much more of our mineral exploration and development, the exporting (loss) of thousands of U.S. jobs, and businesses, an increased U.S. trade deficit resulting from the purchase of foreign minerals (while ours lie "fallow" and undeveloped), and subservience to foreign mineral sources. The several U.S. oil "crunches" of the last 25 years dramatically demonstrate the obvious detriment to the United States being dependent upon and subservient to unreliable foreign cartels and foreign sources for oil, or for minerals.

HR.322 is an anti-mining law thinly disguised as a "revenue-raising" and "environmental" law. HR.322 should not be enacted without full Environmental and Economical Impact Reports, or at least with a detailed analysis and consideration by the Congress of the billions of dollars of negative economic effects, including the destruction of most of the existing U.S. public land mining operation. A responsible American accounting firm, Coopers and Lybrand, estimated that the cost of the

restrictions equivalent to those in HR.322, would be from $2-billion to $4-billion annually in lost revenue and lost economic activity, and a loss of from 10,000 to 30,000 jobs.

HR.322 is proposed as a "revenue raising" bill; but HR.322 will not raise substantial revenue, and will cost much more than any revenue raised. The real frightening and specific agenda of many devoted proponents of anti-mining legislation such as HR.322 under the guise of "revenue raising" or environmental laws, is to rid the United States of mining, of all mineral exploration and development, and of all development.

Even now, the continuing detrimental "chilling" effect of many of our existing laws and regulations should be fully examined. Of specific critical concern are the many thousands of jobs and billions of dollars lost or endangered by erroneous and premature conclusions and regulations under certain "environmental laws," under the Endangered Species Act and under "Wetlands" laws. These environmental laws, and particularly the Endangered Species Act, have already destroyed thousands of U.S. jobs, have "exported" many businesses to foreign countries, and have created cumbersome new layers of bureaucracy, spurred on by the private well-funded environmental activist groups pushing their not-so-hidden agenda of "No Development, No Mining and No Oil" in the Western United States.

Besides being subject to the strictest environmental regulations in the world, American miners and prospectors today are very much "environmentalists," and do much more for the preservation of wildlife and the environment than do most of this country's strident environmental activists. U.S. mining today does not hurt or destroy the environment. Miners do not kill animals; and in fact, mining activity has substantially increased the numbers and well-being of much wildlife, specifically including the Desert Tortoise, Bighorn Sheep and other wildlife.

The United States mineral exploration and development industry today is operating efficiently and in compliance with the current strict environmental controls; but, HR.322 could well be the coup de gras to end our efficient incentive-based system of mineral exploration and development, which would substantially decrease the future productivity and the future military and industrial strength of the United States.

The United States will not have a viable mining industry in the year 2000 and beyond, under HR.322, because the present incentive-based mineral exploration and development "infrastructure" would be devastated by the restrictive acreage-based "lease/fee system" and by the burdensome nonproductive, or anti-productive, restrictions of HR.322.

IV. THE UNITED STATES DEPENDS UPON PRIVATE MINERAL PROSPECTORS TO LOCATE, IDENTIFY AND "INVENTORY" MINERAL DEPOSITS FOR FUTURE DEVELOPMENT.

Most of the mineral discoveries in the Western United States have been made by independent private citizens under the U.S. Mining Law. Many of these mineral discoveries have resulted in major mines, with each mine complying with stringent environmental controls and reclamation requirements. The incentive for these citizen-prospectors is the Mining Law which provides an opportunity for U.S. citizens to prospect for minerals on public domain land, without damaging or degrading the land. The major U.S. mining companies agree that approximately 70-80% of their mines have come from discoveries by individual citizens prospecting for minerals under the current U.S. Mining Law. The California Chamber of Commerce has stated specifically that: "Mining corporations would be

crippled without the aid of the individual prospectors to help in the location and identification of future mineral deposits."

Today the Mining Law is efficiently maintaining an efficient and productive system of locating, identifying and "inventorying" minerals for future development and use, at no cost to the public.

The thousands of private citizens who regularly explore for minerals in the United States do not degrade the environment; these U.S. citizens are fully subject to strict environmental controls; and all U.S. mineral developers must "reclaim" the land after their work is completed.

Mineral exploration and development equipment today is vastly superior to that of 10 to 50 years ago. Today's efficient exploration methods and equipment enable mineral prospectors to locate previously hidden or unknown mineral deposits. Modern efficient processing and development methods make many previously uneconomic low-grade deposits commercially feasible today.

The mineral discoveries by citizen-prospectors today provide an efficient low-cost system of finding previously unknown mineral deposits on the public lands of the United States. For example, it has been recently reported that private citizen-prospectors have discovered commercial deposits of chromium, manganese and platinum in California, which if true, would help to eliminate our dependency upon foreign sources for these essential minerals. Such mineral deposits cannot be identified and "inventoried" without these citizens exploring for minerals under the U.S. Mining Law.

There are many world-class mines in the Western United States which were discovered by individual private prospectors, looking in areas not previously known to contain commercially valuable mineral deposits. These major mines include Molycorp's "Mountain Pass Mine" (major world source of rare earths), Gold Fields Mining Corp.'s "Mesquite Mine" (over $80-million

annual gold production), and U.S. Borax Corp.'s "Boron Mine" (60% of the free world's borates). These major mines in California, and many others elsewhere throughout the Western United States would never have been developed without the incentives under the Mining Law. There are thousands of persons today, and several in this room, who regularly go out prospecting for minerals on U.S. public lands.

The U.S. Mining Law provides mineral prospectors with incentives in that if a citizen-prospector finds a mineral deposit, then that person may develop a mine, at no cost to the public.

HR.322 and patenting are not "environmental issues." U.S. mining and mineral exploration is the most heavily regulated in the world, and mineral patenting today is very closely monitored and controlled. The organized groups of environmental "activist" supporters of HR.322 must be recognized for their unreasonable anti-mining agenda of "No Mining, No Oil and No Development," anywhere in the United States.

The American Mining Congress has stated that: "The contribution of the small miner to the search for new mineral wealth is substantial, [and]... both the executive and legislative branches of government must assure the small miners' continued access to public lands to search for, develop and produce new mineral wealth without the fear that he will be unable to enjoy the fruits of his labors."

V. HR.322 WOULD INCREASE THE UNEMPLOYMENT AND WOULD INCREASE U.S. TRADE DEFICIT BY ACCELERATING THE EXODUS OF MINERAL PRODUCTION COMPANIES FROM THE UNITED STATES.

One of the most significant permanent economic effects of HR.322 would

be the increase in the U.S. trade deficit caused by our importing more foreign minerals rather than exporting them from the United States. Particularly in the present economic recession, our nation needs to stimulate the creation of new jobs, to improve the U.S. trade deficit and to strengthen the economy. HR.322 would operate directly counter to most of this country's current specific economic goals; and HR.322 would aggravate the present recession by increasing joblessness and decreasing the gross national product.

We must stop exporting jobs, and we must stop relying upon imported minerals (and oil) which we have reasonably and readily available for production and development in the United States. The armed forces and private industry of the United States run on minerals, which should be United States minerals.

The costs of closing U.S. mines or not allowing new mines to open would be tremendous. Today we are overpaying for foreign minerals because of previous closings of United States mines and mineral exploration operations, while the minerals lie available on our public land.

VI. EXAMPLES OF THE RECENT EXODUS OF MINERAL DEVELOPMENT FIRMS FROM THE UNITED STATES.

Please consider the recent exodus of mines from the Western United States, and the loss of jobs, due to the chilling effect of the recent combination of environmental and economic pressures (obviously, even before HR.322), resulting in businesses and jobs being "thrown out" of this country. Examples of this "forced exodus" of mineral jobs and development from the United States are:

(1) Steel. Today we are overpaying for Japanese steel, processed from Brazilian iron ore. When the Eagle Mountain Iron Mine and the Fontana Steel Plant (in Riverside County, California) closed in 1983 due to environmental pressures and Kaiser's economic problems, the Japanese immediately stopped dumping steel in the U.S. and raised their steel prices substantially. Most West Coast steel today is purchased from Japan, and Japan purchases much of its iron ore from Brazil. The tragedy of the Eagle Mountain Iron Mine is that hundreds of millions of tons of usable iron ore are lying fallow and readily available in the U.S., while we buy Japanese steel at inflated prices. Brazil has cheap labor and minimal environmental controls; millions of tons are shipped from Brazil to Japan, and from Japan to the U.S., in diesel-powered freighters; and the world environment is more polluted. Kaiser created an estimated $1-billion annually in total iron, steel and related economic activity before Eagle Mountain and Fontana were closed down. The 1983 Kaiser closure destroyed and "exported" 20,000 jobs. Efforts to reopen the Eagle Mountain Iron Mine have been unsuccessful because of the unrelenting pressure from the radical environmentalists who continue to a ggressively fight any development or mining anywhere in the United States.

(2) Rhodium. The price of rhodium soared from $1,300/ounce in 1989 up to about $5,000/ounce, dropping back today due to the current protracted recession, with industry predictions of higher rhodium prices in the near future. Rhodium is a platinum-group metal used in catalytic converters, and is imported primarily from South Africa. Rhodium is known to exist in small quantities on U.S. public lands; but exploration for rhodium will stop under HR.322.

(3) Talc. We are now overpaying for Chinese talc. In 1987 a large U.S. talc mine was closed because of environmental pressures, the equipment

was loaded into containers and shipped to Mainland China; and today we are no longer exporting talc, but are now importing processed talc mined and processed in China with cheap or reportedly virtual slave labor, and with no environmental controls--all to the detriment of our trade balance, local jobs and our standard of living.

(4) Fiberglass. Currently we are overpaying for Turkish colemanite, a major component of fiberglass. Colemanite was mined in the U.S. until a few years ago when the mine closed; and our major supplier is now Turkey. Hopes of reopening and developing the U.S. colemanite mines, or of discovering new sources, would virtually disappear under HR.322.

(5) Mercury. We are overpaying for mercury. By means of a false environmental scare, the major U.S. mercury mine at New Idria, California, was closed, dismantled and the homes and jobs of several hundred workers were literally destroyed. After the demolition of the houses and closing of the operation, it was learned that there was no "environmental hazard" at all, because the gravel and tailings upon which the town had been built were completely safe and free from mercury and other hazards, and the readings on mercury were less than even the stringent "safe" and "normal" background standards.

(6) Wollastonite. Wollastonite is a non-metallic mineral which plays a critical role in energy conservation by utilization in high-temperature ceramics, paints and plastics. Wollastonite is increasingly important in the development of energy-saving automobiles and other products. The major producer of wollastonite is Finland. Today, the world's largest known wollastonite deposit lies undeveloped on our public land; and the development of this prospective world-class U.S. wollastonite mine would be curtailed or stopped under the restrictions of HR.322 and related regulations and laws.

If more U.S. mines are restricted or closed under HR.322 or similar laws, the present U.S. mineral production would have to come from elsewhere -- colemanite and boron from Turkey, talc and rare earths from China, and steel from Japan made from iron ore shipped from Brazil. Our strict U.S. environmental controls do not exist in Brazil, Turkey or China. by "exporting" U.S. mining overseas, the result would be a decreased U.S. gross national product, a decreased U.S. standard of living, an increased U.S. trade deficit, and increased world pollution. The "revenue" raised by HR.322 would be minimal, compared to its tremendous costs. Under HR.322 the U.S. public would "lose"; the U.S. mineral exploration and development industry would be devastated; the world environment would suffer; and the U.S. would till pay more, possibly much more, for the very same minerals which would lie untouched on public lands in the United States.

The recent example of the extreme measures, including war, that the United States has utilized in the Middle East to protect sources of oil, could well be repeated if the Untied States becomes subservient to unreliable foreign sources of essential minerals.

The danger flag is up; and now is the time for this Subcommittee to fully investigate and determine the short and long term detrimental effects of the destruction of the incentive-based Mining Law and the de facto nationalization of the U.S. mineral exploration and development industry under HR.322.

VII. HR.322 WOULD COST THE U.S. ECONOMY AND THE U.S PUBLIC MANY BILLIONS OF DOLLARS.

Please consider the following tremendous costs to the U.S., and to the U.S. citizens, which would result if HR.322, or a similar law, were to be

enacted:

(1) Increased Prices of Minerals. The cost of many essential minerals and rare earths would rise because of the disappearance of the supplies and identified future sources of these minerals from United States public lands. The U.S. would be subject to the uncertainties of unreliable foreign sources and cartels for many essential, critical and strategic minerals, just as we were in the oil "shortage" of the 1970's, and in other envisioned oil "crises." We are already paying excessive prices for foreign steel, chromite, mercury and talcum powder. Please do not make it worse by enacting HR.322.

(2) Fifth Amendment "Takings." Billions of dollars of eminent domain awards would be due to the present owners of mining claims and businesses destroyed or impaired because of HR.322 and the "regulations" which would implement the law. The U.S. government would be liable for these inverse condemnation takings under the Fifth Amendment, as reaffirmed in recent U.S. Supreme Court decisions. Such takings, and specifically including "regulatory takings," are compensable, as set out in Executive Order 12630 of March 15, 1988. For example, in 1980 a federal lease which had been restricted by wilderness regulations was held to be a mere "shell" lease, and a compensable taking. Existing mining claims and businesses which are subjected to new impairing restrictions under HR.322 would also be "takings" of property requiring compensation under the Fifth Amendment.

(3) Non-Compensable Losses and Homelessness. Thousands of U.S. jobs have already been lost and persons made homeless by unwise and unthinking legislation and regulations, and many more would result from HR.322 and the regulations and similar laws which would follow. Particularly hard hit would be independent family mining businesses, private exploration and mining development companies, related service and support businesses,

equipment sales and service, and, of course, the thousands of future prospective mineral exploration and development businesses and individuals. Most of these private future losses of businesses, income and property would be non-compensable under the Fifth Amendment.

(4) Dependence Upon Unreliable Foreign Sources for Minerals. The most serious "cost" of HR.322 and the most serious effect of the devastation of the U.S. mineral exploration and development industry, would be the increased dependence of the United States upon foreign sources for essential minerals and rare earths which are indispensable to maintaining our dominant position in the critical areas of military hardware, space technology, nuclear fusion and super-conductivity. We would be unable to keep our "edge" if a foreign nation or cartel chose to not set us their particular essential minerals. No dollar value can be placed upon the U.S. retaining its position as the world leader in high technology research, security and national defense. The list of affected minerals is long and varied, including: Iron ore, rare earths, rhodium, palladium, other platinum group metals, precious metals, talc, titanium, chromium etc.

Some of the Western U.S. undeveloped mineral potential is aptly discussed in the May 1992 U.S. Bureau of Mines publication OFR-62-92, entitled "Mineral Diversity in the California Desert Conservation Area."

VIII. CONCLUSION

The present U.S. incentive-based mineral exploration and development system works efficiently under the present U.S. Mining Law (including the "1872 General Mining Act," and the hundreds of amendments, regulations and court decisions). This efficiently-operating mineral exploration system

locates, identifies and "inventories" U.S. mineral deposits and reserves for future use, at no cost to the public. Thousands of individuals and mineral exploration companies would be devastated by the excessive regulations, restrictions and fees under the HR.322 "lease/fee" system. HR.322 would result in increased mineral prices, and would have a detrimental effect of the U.S. trade balance and the gross national product by the "exporting" of thousands of jobs and businesses, and by necessitating increased importing of essential minerals.

Today, when the citizens of many nations are liberating themselves from years of excessive and inefficient nationalization and government regulations, the U.S. Congress should encourage and expand the efficiently operating incentive system of mineral exploration, identification and development which is working well. The U.S. mining industry is already one of the most environmentally regulated in the world. HR.322 would hurt the U.S. mineral exploration and development industry, with no substantial "revenue" or commensurate benefit to the United States.

This Subcommittee should fully examine whether or not there would be substantial detrimental and devastating costs and effects of HR.322, without any benefits. In the event that the facts and conclusions herein are true, then it is absolutely critical that HR.322 not be enacted. The incentive-based U.S. Mining Law should be expanded, not destroyed. We do not need and cannot afford the tremendous cost and the de facto "nationalization" of U.S. mineral exploration and development under HR.322, and HR.322 should not be enacted.

We will be happy to provide this Subcommittee, or individual members, with substantial additional information and data on the facts and statements set out in this testimony, most of which are readily available in industry and public records.

Thank you for allowing the National Association of Mining Districts (NAMD) and the Pacific Mining Association to present their views in opposition to HR.322.

ROBERT A. SANREGRET, Executive Director

NATIONAL ASSOCIATION OF MINING DISTRICTS ("NAMD")
17461 Irvine Blvd., Suite A
Tustin, California 92680-3034
(714) 731-1335

1992 REPORT ON THE PROGRAMS AND ACTIVITIES OF THE NATIONAL ASSOCIATION OF MINING DISTRICTS (NAMD).

TUSTIN, CALIFORNIA. NAMD Executive Director Robert A. Sanregret has reported that the NAMD member Mining Districts are active and vital, and that the NAMD activities are increasing, under the specific U.S. Congressional enabling legislation, the U.S. Mining Law (30 U.S.C., Section 28, et seq.).

The NAMD reports that the following public service and mutual benefit programs and activities are being coordinated with the NAMD member Mining Districts, and assisted by the NAMD:

1. Organization of Mining Districts. The NAMD assists member Mining Districts in their organizational and administrative plans, paperwork, charters, regulations, by-laws, etc.

2. Recordation and Filing Locations and Assessment Work. The NAMD provides information and forms to assist in filing required papers (Location Notices; Amendments; Assessment Work; etc.), and the NAMD assists member Mining Districts in maintaining registers of mining claims and operations in their Districts.

3. NAMD Historic Site Register. The NAMD will coordinate the Mining Districts' identification, photographing and registration of "NAMD Historic Sites," including historical buildings, roads, ruins, minesites, dumps, Indian artifacts, archeological sites, etc. These sites will be registered in the official "NAMD Historic Site Register," a sign will be erected, the site will be fenced or protected if appropriate, and the site will be preserved for its historical value. Our "NAMD Historic Site Register" will be shared and coordinated with County, State and National Historical Registration Programs, and with research and studies by Colleges, Universities, Historical Societies and other groups.

4. Hazard Reports. The NAMD member Districts will encourage and assist members in watching for and reporting physical and environmental hazards observed in the field. Permanent hazards (e.g., open abandoned mine pits, shafts, old chemical dumps, etc.) will be identified, marked and reported in writing on NAMD forms to the appropriate County, State and Federal authorities (EPA; County Sheriff; BLM; USFS; USGS; etc.); and an open master reference index of the known physical and environmental hazards will be maintained by the NAMD.

5. Firewatch. NAMD members will be educated on procedures and communications (CB; ham radio; cellular; telephone) for immediate reporting of fire hazards and fires observed in the field. Individuals are encouraged to participate in local volunteer fire protection and fire-fighting programs.

6. Environmental Protection. The NAMD encourages and educates members to obey environmental and reclamation laws and regulations, and to conduct their prospecting and mining activities to prevent environmental damage and to facilitate the reclamation of sites after completion of the mining or prospecting.

7. USGS Map Reports. NAMD members will report on standard "NAMD Map Report Forms" changes and discrepancies on the USGS quad maps, to assist the USGS and other agencies in their periodic map updates. "Map report" examples include: Damaged, missing or misplaced U.S. Survey Markers or other benchmarks; changed or missing landmarks, such as water towers, roads, prospect holes; geology; etc.

8. Mining District Histories. The NAMD is working on compilation of comprehensive written histories of the member Mining Districts and of other significant old and current "mining camps" and mines in the Western U.S., in conjunction with local colleges, and with historical and geological societies.

9. Education. NAMD will sponsor and coordinate educational programs and seminars by NAMD and in conjunction with other groups, on matters of current concern, including: Mineral exploration and development techniques; geology; equipment operation and maintenance; U.S. minerals and mining; U.S. mining history; governmental regulations and forms; etc.

10. Legislative Watch. NAMD will monitor pending and prospective legislation, and will offer views and testimony to government agencies and legislators. The national legislative program will be run through the NAMD Legislative Office in Washington, D.C.

11. Ethics Code. The NAMD has a code of ethical behavior to which all Mining District members agree to comply, relative to field activities, claim location, field courtesy, field assistance, etc.

12. Dispute Resolution. The NAMD will provide facilities for the settlement or arbitration of disputes between members of the Mining Districts; and the NAMD or the Mining District will, under certain circumstances, act as an "Ombudsman" in disputes between claimholders and government agencies (e.g., BLM or USFS citations, contests, reclamation disputes, plan of operation disputes, evictions, etc.).

13. Public Relations. The NAMD and the member Mining Districts are expanding their programs and educating the public on the value and contributions to the U.S. of minerals, mineral prospectors and mining under the U.S. Mining Law.

The NAMD solicits your ideas and assistance on these and other NAMD projects and activities. If you have not registered your Mining District on the NAMD Roster, send your information today to:

THE NATIONAL ASSOCIATION OF MINING DISTRICTS (NAMD)
Robert A. Sanregret, Executive Director
17461 Irvine Blvd., Suite A
Tustin, CA 92680
(714) 731-1335 (FAX 714) 544-8406

NATIONAL ASSOCIATION OF MINING DISTRICTS
P.O. Box 1054, Tustin, CA 92681

To: All Miners, Prospectors and *all Mining Districts.*
From: Robert A. Sanregret, National Association of Mining Districts (NAMD)
Re: Roster of *Mining Districts* for NAMD

This is a call for all Mining Districts in the Western U.S. to join the NAMD in our current efforts to further U.S. mining causes.

Each mining claimholder is in a *Mining District* (e.g., "Quartz Peak Mining District", "Blackhawk Mining District", etc.), and each prospector is, of course, prospecting in a Mining District. We want to identify all Mining Districts; and your Mining District should be on our roster.

The Mining District activity will be coordinated through the NAMD (assisted by the National Inholders Association [NIA] and Western Mining Council [WMC]). Please send us the identification and documents of your Mining District for our NAMD roster. You need not be a claimholder to enroll yourself or a Mining District with the NAMD.

The federal statute (30 U.S.-Code, Section 28), part of the 1872 Mining Law, directly authorizes Mining Districts to regulate themselves (similar to State "Irrigation Districts" and "School Districts"), as follows:

> "*Mining District Regulation by Miners:* . . . The miners of each district may make regulations not in conflict with the laws of the U.S., or with the laws of the state or territory in which the district is situated, governing the location, manner of recording, amount of work necessary to hold possession of a mining claim . . . [markings on the ground, records, information needed on location notices], etc." 30 U.S.C., Section 28.

Please send the *roster* information (no charge), so that the NAMD will know the identity of the Mining District in which you are prospecting or own a claim. You should also get copies of the by-laws, minutes and all other past records of the Mining District existence and activity. These records are available from the County Recorder, your County or local Historical Society, old newspapers, and are frequently contained as a part of the old Patent Applications for any patented mines in the District. *Please get these.* And, please send us a clear copy of *all such records.* For reference, see *"Gold Districts of California"*, sold by the California Division of Mines & Geology, for about $8.00; and other references.

We need your help. *Please reply today:*

Your name (print): _____
Address/City/Zip: _____
Telephone: ( ) _____
Name of Mining District: _____
State & County of Mining District: _____

Send to: National Association of Mining Districts (NAMD)
P.O. Box 1054, Tustin, CA 92681
(714) 731-1335 FAX (714) 544-8406

~~93-558~~ 694

Mr. LEHMAN. I notice Mr. Doolittle is here. Mr. Doolittle, do you have anything to add?

Mr. DOOLITTLE. Mr. Chairman, we had another hearing going on at the same time. I have a statement that I would like to put in the record.

Mr. LEHMAN. Without objection, we will put your statement in the record as well.

Mr. DOOLITTLE. Thank you.

[Prepared statement of Mr. Doolittle follows:]

Statement of the Honorable John T. Doolittle Before the Subcommittee on Energy and Mineral Resources

MR. CHAIRMAN, I APPRECIATE YOUR SCHEDULING THIS HEARING ON THE MINERAL EXPLORATION AND DEVELOPMENT ACT OF 1993. IF PASSED, THIS LEGISLATION COULD HAVE SOME VERY SERIOUS CONSEQUENCES. THIS HEARING IS THE FIRST STEP IN A PROCESS THAT I HOPE WILL BRING BOTH SIDES CLOSER TOGETHER ON THIS ISSUE. IN ITS CURRENT FORM, I AM UNABLE TO SUPPORT THIS LEGISLATION.

LAST YEAR, CALIFORNIA LED THE NATION IN NON-FUEL MINERAL PRODUCTION TOTALLING OVER $2.4 BILLION. CURRENTLY, THE INDUSTRY EMPLOYS 36,000 FULL TIME WORKERS AND BRINGS IN $80 MILLION IN STATE AND LOCAL TAX REVENUES ANNUALLY. FRANKLY, MY DISTRICT, WHICH HAS ALREADY BEEN DEVASTATED BY MILL AND MILITARY BASE CLOSURES, CANNOT AFFORD ANY MORE DRAIN ON ITS ECONOMY. BESIDES THE FINANCIAL DIFFICULTIES CREATED BY THE RECESSION, BUSINESS OWNERS IN MY DISTRICT ARE ALREADY BOGGED DOWN BY AN OVERLY BURDENSOME REGULATORY AND PERMITTING PROCESS. H.R. 322 SIMPLY ADDS TO THIS REGULATION AND PERMITTING PROCESS, FORCING MORE BUSINESSES OUT OF MINING.

I BELIEVE FEW STATUTORY CHANGES ARE NEEDED BECAUSE ADMINISTRATIVE RULE CHANGES CAN SERVE TO CORRECT MANY OF THE ABUSES OF THE LAW THAT ARE WIDELY PUBLISHED IN THE MEDIA TODAY.

ALSO, THE MINING LAW HAS BEEN "AMENDED" IN PRACTICAL EFFECT BY ALL THE SUBSTANTIVE ENVIRONMENTAL STATUTES OF THE LAST SEVERAL DECADES, INCLUDING CLEAN AIR, CLEAN WATER, THREATENED AND

ENDANGERED SPECIES, ARCHAEOLOGICAL RESOURCES PROTECTION, ETC.

THE STAKING OF MINING CLAIMS UNDER THE CURRENT MINING LAW DOES NOT SHIELD CLAIMANTS FROM THE NEED TO COMPLY WITH THESE LAWS. ALTHOUGH MINING IMPACTS ARE NOT ACCEPTABLE EVERYWHERE ON PUBLIC LANDS, THE DECISION WHETHER OR NOT TO MINE, HARVEST TIMBER, OR GRAZE THE LAND SHOULD BE LEFT TO ELECTED REPRESENTATIVES. THE CURRENT MINING PROPOSAL WOULD TURN THESE DECISIONS OVER TO BUREAUCRATS. FURTHERMORE, THE CURRENT PROPOSAL INCORPORATES "CITIZEN SUITS" WHICH ARE LAWSUITS WHICH COULD BE USED AS WEAPONS TO SHUTDOWN LEGITIMATE OPERATORS WHILE THE CASE MAKES ITS WAY THROUGH THE COURTS.

OUTRIGHT REPEAL IS UNWARRANTED, BUT SOME AMENDMENTS TO THE CURRENT LAW ARE NOT OUT OF THE QUESTION. SUCH AMENDMENTS COULD INCLUDE CHANGES IN THE MANNER OF PATENTING MINING CLAIMS (PAYMENT OF FAIR MARKET VALUE FOR THE SURFACE ESTATE), REVERSION OF THE PATENT IF THE LAND IS PUT TO A NON-MINING USE, AND PAYMENT OF AN ANNUAL RENTAL IN LIEU OF PERFORMING ASSESSMENT WORK (AT THE OPTION OF THE MINING CLAIMANT).

INCREASES IN ROYALTY COSTS WOULD, IN FACT, ONLY RESULT IN A NET LOSS TO THE TREASURY. BY INCREASING THE AMOUNT OF ROYALTIES PAID BY A COMPANY, YOU DECREASE THE AMOUNT OF INCOME TAXES PAID. THE PROPOSED ROYALTY OF 8% WOULD BE COMPARABLE TO $30 MILLION DECLINE IN THE PRICE OF GOLD. CONSEQUENTLY, THIS RESULTS IN A 20% LOSS OF EMPLOYMENT TO THE INDUSTRY.

THE MINING INDUSTRY IS WILLING TO WORK TO ADDRESS SOME OF THE PROBLEMS IN THE MINING LAW, BUT THIS BILL IS SIMPLY A ONESIDED ATTACK ON THE INDUSTRY.

Mr. LEHMAN. We want to thank you for being so patient, for giving such good testimony, and we look forward to working with you in the future. Thank you very much. That will adjourn the hearing for now.

[Whereupon, at 4:00 p.m., the subcommittee was adjourned.]

APPENDIX

MARCH 11, 1993

ADDITIONAL MATERIAL SUBMITTED FOR THE HEARING RECORD

U.S. House of Representatives
Committee on
Natural Resources
Washington, DC 20515-6201

March 15, 1993

COPY

The Honorable Bruce Babbitt, Secretary
U. S. Department of the Interior
Washington, D.C. 20240

Dear Secretary Babbitt:

We are writing to follow up on several matters relating to H.R. 322, "the Mineral Exploration and Development Act of 1993" on which you testified last week before the Subcommittee on Energy and Mineral Resources.

Patents

We applaud your action revoking BLM's authority to sign first-half final and final certificates. However, we continue to have questions regarding BLM's administration of the patent program and would appreciate your views on the following points:

1. Under whose authority was the "Pilot Program" initiated?

2. Was public input sought prior to implementing this change in procedure? If so, how and when?

3. Please explain how the BLM provided notice to the public of a change in procedure. For instance, was the Pilot Program announced in the Federal Register?

4. Were the American Barrick Goldstrike applications selected by BLM to be used as a test case, and if so, why?

5. What other patent applications have been processed under the "Pilot Program"? How were these applications, if any, selected? In other words, what is the criteria BLM used to decide to "fast track" a patent application?

6. Do you intend to halt the project? If not, please explain why it would be in the public interest to expedite the processing of patent applications at this time.

Land Ownership Patterns

How many operations on public lands also encompass private and state lands? Please be as specific as possible.

User fees

BLM currently charges $15.00 to file a claim notice. Is this an accurate reflection of the cost to BLM for this service?

What would be a reasonable charge for processing a plan of operations as proposed under H. R. 322? For what other services would BLM expect to recoup the costs of administering the mining law program once H.R. 322 is enacted? Please provide the estimated revenues BLM would anticipate recouping if so authorized.

Income Tax Deductions

Does the tax code as currently written provide significant benefits to the hard rock mining industry? Specifically, can you quantify the effects of the provisions for expensing, accelerated depreciation and depletion allowances?

What are the projected benefits of the proposed investment tax credit in the President's economic plan for the hard rock mining industry? And specifically, how would the small miner benefit from this proposal?

The information we are requesting will assist the Committee as we consider reporting H.R. 322 to the House. Therefore, we would greatly appreciate a response no later than March 22, 1993.

Thank you for your consideration of this important matter.

Sincerely,

RICHARD H. LEHMAN
Chairman, Subcommittee
on Energy and Mineral Resources

GEORGE MILLER
Chairman, Committee
on Natural Resources

CC: Honorable Nick J. Rahall

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

MAY 11 1993

Honorable Richard H. Lehman
Chairman, Subcommittee on Energy
and Mineral Resources
Committee on Natural Resources
House of Representatives
Washington, D.C. 20515-6201

Dear Mr. Chairman:

We are pleased to enclose responses to questions submitted to Secretary Babbitt as followup to the March 11, 1993, hearing on H.R. 322, the Mineral Exploration and Development Act of 1993.

Thank you for the opportunity to provide this material to the Subcommittee. If you have any further questions or need additonal information, please let us know. An identical letter has been sent to Chairman Miller.

Sincerely,

Ralph G. Hill, Jr.
Assistant Legislative Counsel

Enclosure

cc: Honorable Nick J. Rahall

RESPONSES TO QUESTIONS OF THE COMMITTEE ON NATURAL RESOURCES
PERTAINING TO HR 322 HEARING ON MARCH 11, 1993

PATENTS

1. Under whose authority was the "Pilot Program" initiated?

Answer: The Assistant Director for Energy and Mineral Resources of the Bureau of Land Management (BLM) authorized the Pilot Program. In 1991, the Bureau discussed various ways and means of reducing the backlog of mineral patent applications in cases where first half of the mineral entry final certificate (FC) had been issued, but the mineral examination had not been initiated. The Deputy State Directors for Mineral Resources met and determined that contracting of the mineral examination, under Bureau control and supervision, was a potential option.

The States of Nevada and California (which have the largest backlogs) were directed in the Bureau's 1993 Annual Work Plan to propose a process and develop guidelines for implementing such an option, which was done. On July 24, 1992, the Assistant Director for Energy and Mineral Resources approved the California proposals and guidelines for its "Pilot Project." On December 7, 1992, the Assistant Director for Energy and Mineral Resources approved the Nevada proposals and guidelines for its "Pilot Project". The "Pilot Project" has been implemented in those two states only, on a two-year trial basis. I evaluated the "Pilot Program" and decided to terminate it. I have issued an order directing its termination (attached).

THE SECRETARY OF THE INTERIOR

WASHINGTON

April 26, 1993

Memorandum

To: Acting Director, BLM

From: Secretary

Re: Terminating BLM "Pilot Program" for Expediting the Processing of Mining Patent Applications

I understand that last fall BLM initiated a "pilot program" to expedite the processing of Mining Law patent applications. The program basically allows the applicant to contract for preparation of the mineral examination, an essential step to securing a patent.

Given the serious consideration being given to Mining Law reform, the Administration's support for that reform, and the substantial congressional and public attention being focused on the patent feature of current law (under which publicly-owned resources of great value are privatized for $2.50 or $5.00 per acre), I do not believe it is in the public interest to continue any program that accelerates the patenting process. Therefore, I direct you to take the necessary steps to discontinue the program immediately.

RESPONSES TO QUESTIONS OF THE COMMITTEE ON NATURAL RESOURCES PERTAINING TO HR 322 HEARING ON MARCH 11, 1993

2. Was public input sought prior to implementing this change in procedure? If so, how and when?

Answer: Public notice in such matters (publication in the Federal Register) is not required, as the Department was not amending or changing its regulations and the action was directed at specific parties (mineral patent applicants) who are seeking title to public lands embracing their claims, and not at the public in general.

However, in October of 1992, the BLM State Office in Nevada sent a letter of inquiry to all mineral patent applicants in that State, asking for an expression of interest in participation in the "Pilot Program". Copies of the letter were provided to interested outside parties as well (the Sierra Club and State agencies). The BLM State Office in California issued an Instruction Memorandum to its District Offices in January, 1993 which announced the availability of the "Pilot Program" and requested the Districts to inquire locally with their applicants for an expression of interest. Copies of the California memorandum were provided to the California Mining Association and Western Mining Council at the same time.

The use of third party contractors and consultants, at the expense of an applicant but under the jurisdiction and control of the Department, is authorized under Section 307 of the Federal Land Policy and Management Act of 1976, as amended.

RESPONSES TO QUESTIONS OF THE COMMITTEE ON NATURAL RESOURCES
PERTAINING TO HR 322 HEARING ON MARCH 11, 1993

3. Please explain how the BLM provided notice to the public of a change in procedure. For instance, was the Pilot Program announced in the Federal Register?

Answer: The "Pilot Project" was not announced in the Federal Register. (See our response to question #2 above).

The "Pilot Project" did not involve a change of procedure but merely permitted third party contractors to do the same mineral examination and mineral report work as would BLM employees, utilizing the exact same standards and guidelines that the BLM mineral examiners must use. The BLM retained all decision making and approval authority throughout the entire process.

RESPONSES TO QUESTIONS OF THE COMMITTEE ON NATURAL RESOURCES PERTAINING TO HR 322 HEARING ON MARCH 11, 1993

4. Were American Barrick Goldstrike applications selected by BLM to be used as a test case, and if so, why?

Answer: Barrick Goldstrike Mines, Inc., was the first to sign up for the "Pilot Program" on its own initiative. The "Pilot Program" operated on a "first come - first served" basis.

5. What other patent applications have been processed under the "Pilot Program"? How are applications, if any, selected? In other words, what is the criteria BLM used to decide to "fast track" a patent application?

Answer: At the time I terminated the "Pilot Program" there was one mineral examination in progress in California pursuant to a Memorandum of Understanding (MOU). The claim is for a mill site. The mining company has committed $25,000 to the contractor on this effort, and the report is about two-thirds done. There is a 30-day notice of revocation clause in the MOU and it will be terminated.

In Nevada there were three MOUs. The work on one application had been completed before I terminated the program. I am now considering the application. The other two MOUs had a 30-day notice of revocation clause and they will be terminated.

On termination, all of these applications for patent will be processed in the usual fashion as are all such applications.

As stated in question 4, applicants were asked to come forward on their own initiative to participate in the "Pilot Program". They were taken on a "first come - first served" basis.

There were no criteria and no Bureau initiative to "fast track" any mineral patent application in this process. The mineral patent adjudication cannot be finished until the mineral report is received and approved by the BLM. If an applicant elected to participate in the "Pilot Program" and provided a qualified mineral examiner to do the mineral examination, the adjudication could be completed in a shorter time frame than if the applicant had to wait for a Bureau mineral examiner to be available to perform the mineral examination. The results of the mineral examination by the private mineral examiner would then have to be reviewed and approved by the BLM.

6. Do you intend to halt the project? If not, please explain why it would be in the public interest to expedite the processing of patent applications at this time.

Answer: As noted, I examined the "Pilot Project" and then issued an order directing that it be terminated.

RESPONSES TO QUESTIONS OF THE COMMITTEE ON NATURAL RESOURCES PERTAINING TO HR 322 HEARING ON MARCH 11, 1993

LAND OWNERSHIP PATTERNS

How many operations on public lands also encompass private and State lands? Please be as specific as possible.

Answer: The Bureau does not at present have a complete inventory for all States as to how much land at each mine site is Federal and how much is in State or private ownership. However, using Nevada as an example; the State Department of Minerals inventory shows that 49 mines produce 85 percent of the total production value of hardrock minerals in Nevada.

Of the 49 mines, 13 are producing entirely from private lands, 15 are producing from a mixture of Federal and private lands, and the remaining 21 are producing entirely from Federal lands.

The State Department of Minerals advises us that 58 percent of the gross production value is produced from Federal lands in Nevada.

RESPONSES TO QUESTIONS OF THE COMMITTEE ON NATURAL RESOURCES
PERTAINING TO HR 322 HEARING ON MARCH 11, 1993

USER FEES

Q. **The BLM currently charges $15.00 to file a claim notice. Is this an accurate reflection of the cost to BLM for this service?**

Answer: The BLM currently charges $10 for the filing of a mining claim location notice. However the BLM is planning to propose rulemaking raising this fee to $15 as the result of a cost recovery study mandated by the Department Office of Inspector General (OIG). This $15 figure was based on a cost survey conducted at all BLM State Offices. The BLM considers that $15 is an accurate reflection of the cost to the BLM for this service.

Q. **What would be a reasonable charge for processing a plan of operations as proposed under H.R. 322? For what other services would the BLM expect to recoup costs of administering the mining law program once H.R. 322 is enacted? Please provide estimated revenues the BLM would anticipate recouping if so authorized.**

Answer: Following the requirements of the Independent Offices Appropriation Act of 1952 (31 U.S.C. 9701) relating to cost recovery, an analysis conducted by the BLM in June 1992, relative to mining plans of operations under the current Mining Law indicated that such plans should be exempted from cost recovery because they provide an overriding benefit to the government, rather than the applicant. A similar analysis would need to be conducted for the requirements proposed in H.R. 322 before it could be determined whether there should be a charge and the amount of any such charge.

We would continue to collect fees for filings that would still exist under H.R. 322: location notices, location notice amendments, and transfers of interest. Other user fees added for any new types of filings under H.R. 322 would have to be analyzed and approved under the above statutory authority as is now the case under the current mining law. Because it is not known at this time what additional user fees might be collected and because the number of active claims remaining after passage of H.R. 322 would be very difficult to estimate, we cannot provide any reliable revenue estimates at this time.

Responses to Questions of the Committee on Natural Resources Pertaining to H.R. 322 Hearing on March 11,1993

Income Tax Deductions

Question
1. Does the tax code as currently written provide significant benefits to the hardrock mining industry? Specifically, can you quantify the effects of the provisions for expensing, accelerated depreciation and depletion allowances?

Answer
The hardrock mineral industry is generally subject to the same tax provisions facing other industries. These provisions include an income tax and accelerated depreciation. However, the hardrock mineral industry also benefits from special tax treatments intended to stimulate the exploration and production of hardrock minerals. These treatments include expensing exploration and development costs, the mine depletion allowance, and the deduction for mine closing and reclamation.

Expensing allows hardrock mining operations to take a current deduction for exploration and development costs rather than amortize these costs over a longer period (usually 10 years). There are some important limitations, however. First, exploration costs must be recaptured when production begins or when the mine is sold. Recapture is achieved by either including the expensed costs as ordinary income or by subtracting these costs from the mine depletion allowance. Second, corporations may expense only 70 percent of their exploration and development costs. Finally, exploration and development costs associated with foreign owned properties may not be expensed. A tabulation conducted by the U.S. Treasury indicates that the amount by which the deductions based on expensing exceed the deductions based on usual accounting methods totaled $145 million in 1990.

The mine depletion allowance allows hardrock mining operations to deduct a certain percentage of gross revenue. This deduction is intended to account for the depreciation of the mineral deposit due to extraction. It is analogous to the allowance for capital depreciation that is available to all industries. However, capital depreciation is based on actual investment costs whereas the mine depletion allowance is based on a percentage of gross revenue. The mine depletion allowance for most hardrock minerals is 22 percent of gross revenue and is limited to 50 percent of taxable revenue. The U.S. Treasury tabulation indicates that the amount by which the deductions based on the mine depletion allowance exceed the deductions based on usual accounting methods totaled $435 million 1990.

The Deficit Reduction Act of 1984 allows hardrock mineral operations to deduct the costs of mine closing and reclamation before they are incurred. Usual accounting methods do not allow deductions prior to the occurrence of costs. The U.S. Treasury did not estimate the extent of this special tax treatment.

Some of these special tax treatments are subject to the alternative minimum tax (AMT). This is an additional tax based on items of tax preference. Items of tax preference are tax provisions that significantly reduce a taxpayer's income tax liability. For the hardrock mineral industry, these provisions include expensing exploration and development costs and the mine depletion allowance. The deduction for mine closing and reclamation is not an item of tax preference. The AMT is intended to limit the tax savings associated with items of tax preference in order to ensure that all taxpayers pay some tax. The U.S. Treasury tabulation indicates that hardrock mineral industry AMT payments totaled $105 million in 1990.

Timing is an important factor of the AMT. Taxpayers who currently pay no AMT may credit any past AMT payments to their income tax. Therefore, hardrock mining operations may be able to recover their past AMT payments as exploration and development ends and production begins.

The value of the special tax treatments to the hardrock mineral industry depends on the amount of the deduction taken, the effective marginal tax rate, and the AMT. The U.S. Treasury tabulation indicates that the amount by which the deductions based on items of tax preference exceed the deductions based on usual accounting methods totaled $580 million in 1990. The effective marginal tax rate for the hardrock mineral industry is approximately 30 percent. Therefore, income taxes were reduced by $174 million. However, the AMT on these items of tax preference was $105 million. Hence, the net tax savings due to the special tax treatments was approximately $69 million in 1990. This figure understates the value of the special tax treatments for two reasons. First, hardrock mining operations may be able to recover their past AMT payments at a later date. And second, no estimate of the deduction for mine closing and reclamation was available.

Question

2. What are the projected benefits of the proposed investment tax credit in the President's economic plan for the hardrock mining industry? And specifically, how would the small miner benefit from this proposal?

Answer

The Clinton Administration's proposed economic stimulus package would have provided a wide range of economic measures. Consideration of individual components of it by the Congress is currently under discussion. The package contained a proposed investment tax credit which would have benefitted the hardrock

mineral industry which is highly capital intensive. The effects of the other economic measures cannot be adequately discussed or estimated without a detailed industry analysis.

Under the Administration's proposal, the proposed investment tax credit would be permanent for small businesses and temporary for larger businesses. A small business is defined as one with an average annual gross revenue less than $5 million. The tax credit for small business would be 7 percent of investments in the short term, between 12/3/92 and 1/1/95, and 5 percent of investments in the long term. The tax credit for larger businesses would be 7 percent in the short term and apply only to investments in excess of a qualifying amount. A tabulation conducted by the U.S. Treasury indicates that the proposed investment tax credit would total approximately $55 million per year in the short term and $1 million per year in the long term for the hardrock mineral industry, based on 1989 tax returns.

CBO TESTIMONY

Statement of
Jan Paul Acton
Assistant Director
Natural Resources and Commerce Division
Congressional Budget Office

before the
Subcommittee on Mineral Resources
Development and Production
Committee on Energy and Natural Resources
United States Senate

May 4, 1993

NOTICE

This statement is not available for public release until it is delivered at 2:30 p.m. (EDT), Tuesday, May 4, 1993.

CONGRESSIONAL BUDGET OFFICE
SECOND AND D STREETS, S.W.
WASHINGTON, D.C. 20515

Mr. Chairman and Members of the Subcommittee, I appreciate the opportunity to discuss changes to the mining law of 1872--specifically the proposals that would impose royalties on the extraction of minerals from public lands and impose fees on the holders of claims. My testimony today will focus on three issues:

- The direct effects on federal receipts and the assumptions used to estimate those effects for three proposals to charge royalties and holding fees.

- Estimates of the transitional effects of royalties and holding fees on jobs, concentrating on the effects in the mining industry and in mining regions.

- Some of the advantages and disadvantages of applying royalties to different bases, ranging from gross sales of refined minerals to net proceeds from selected mining activities. The base for the royalty is one of several important differences between the proposals being considered.

The official estimates of costs of legislation prepared by the Congressional Budget Office (CBO) are limited to the direct effects on the federal budget of costs and receipts resulting from the legislation. Imposing a tax or fee on an activity--such as the royalties on mining considered here--would tend to discourage that activity. CBO's official cost estimates therefore take into account the extent to which imposing royalties would lead to a reduction in the production of minerals. The official cost estimates do not include, however, the budgetary implications of any secondary effects on economic activity that might be caused by the legislation.

The proposals to charge royalties and fees must be viewed as part of a larger effort by the Congress to reduce the budget deficit. In the short run, any spending reduction or tax increase that the Congress adopts will impose costs on the economy. But any one legislative package that meets the deficit targets specified in the Congressional budget resolution will have much the same macroeconomic effects as any other such package. Therefore, CBO analyzes the economic effects of deficit reduction plans on an overall basis and not bill by bill. Moreover, secondary economic effects and their implications for federal spending and revenues are difficult to measure, and factoring them into estimates

for individual bills would not increase the reliability of the estimates, despite the apparent additional precision.

Accordingly, we have not estimated the budgetary impacts of the secondary economic effects of mining royalties or holding fees. Other analysts have tried to estimate these secondary effects and have concluded that the overall effect of increasing royalties and fees would be to raise the federal budget deficit. Judging from the evidence we have seen to date, however, the overall effect of imposing royalties or holding fees on hardrock mining would be to reduce the federal budget deficit.

Although measures that reduce the deficit would have short-run economic costs, deficit reduction will provide real economic benefits in the longer run. By stimulating private investment and reducing debt to other countries, reducing the deficit could boost the productivity of workers, raise their real wages, and contribute to higher standards of living for all Americans in the future.

Members of this Subcommittee have expressed concern about the federal budget deficit, but also about the effects of royalties and fees on the mining industry and, in particular, on jobs in mining regions. We

conclude from our analysis that the effects of these proposals would be relatively small, though certainly some miners would lose their jobs and some communities would be affected.

In the proposals now being considered, a large part of royalties and fees collected can be returned to the states. In S. 257, the Mineral Development and Exploration Act of 1993, for example, 25 percent of the royalties go directly to the states, and an additional 50 percent of the royalties and all of the holding fees could be spent on reclamation activities in the states. S. 775, the Hardrock Mining Reform Act of 1993, directs or authorizes all of the receipts it generates to be returned to the states. The greater the proportion of gross receipts that are paid to the states or spent on reclamation activities, the less are the deficit-reducing effects of mining law changes, and the smaller the future benefits stemming from deficit reduction. Additionally, the greater the amount of money paid to the states or spent on reclamation, the smaller would be the adverse effects of collecting royalties and fees on employment or incomes in the mining regions.

The proposals being considered today are the following:

- *S. 257, the Mineral Development and Exploration Act of 1993.* This bill would impose a royalty of 8 percent on the gross income from mineral production from public lands beginning in fiscal year 1997. The bill also would establish an escalating annual rental payment for all hardrock mining claims. The rental payment (or holding fee) would total $5 per acre for each of the first five years following the location of a claim and would escalate in $5 increments every five years thereafter until it reached $25 per acre in the twenty-first year following location. Holders of new claims located after the bill's effective date (October 1, 1994) would begin paying the fee in fiscal year 1995. Existing claims would have three years to convert to the new system and would thus be subject to the royalty and rental fee provisions beginning in 1997. Twenty-five percent of royalties would be paid to the states. The bill authorizes 50 percent of gross royalties collected and all of the rental payments to be used to reclaim abandoned mines.

- *The President's Proposal, Contained in His 1994 Budget.* The President proposes a 12.5 percent royalty on the value of

production to be phased in gradually over the three-year period beginning in 1995. Twenty-five percent of royalties would be paid to the states. His proposal would also make permanent the temporary $100 per claim holding fee that was imposed on all existing hardrock mining claims in the 1993 Interior appropriation bill (Public Law 102-381). The President would commit some of these funds--about $17 million annually--to cover the administrative costs of the mining program.

- *S. 775, the Hardrock Mining Reform Act of 1993.* This bill would impose a royalty on production from claims located after the bill's enactment; the royalty would be 2 percent of the net proceeds from hardrock mining. The bill would also establish a $25 location fee for all new claims staked after the bill is enacted, and would require all large-sized claimholders (defined as those claimants holding more than 50 claims) to pay $100 annually per claim to maintain their claims. Medium-sized claimholders--those holding between 11 and 50 claims--would have to pay $25 annually per claim, and small-sized claimholders--those holding 10 or fewer

claims--would be exempt from the annual maintenance fee. The bill would also require certain fees to be paid when land is patented. One-third of all receipts (location fees, maintenance fees, royalties, and patent fees) generated as a result of the bill's enactment would be distributed to the states. The bill authorizes appropriations of up to the remaining two-thirds of gross receipts to be used for grants to states for reclaiming abandoned mines.

DIRECT BUDGETARY EFFECTS OF MINING LAW REFORM

Over the 1994-1998 period, CBO estimates that the royalties imposed by S. 257 would generate gross offsetting receipts to the Treasury of $164 million, of which $41 million would be paid to states (see Table 1). The royalties in the President's proposal would generate gross receipts of $380 million over the same period, with $87 million being paid to states. The royalty provisions of S. 775 would generate no receipts. Receipts from the President's proposal exceed those under S. 257 both because the royalty rate is higher--12.5 percent under the President's proposal, compared with 8 percent in S. 257--and because the royalties under the President's proposal would become effective earlier than in S. 257.

TABLE 1. ESTIMATED BUDGETARY EFFECTS OF ROYALTIES AND HOLDING FEES
(In millions of dollars, by fiscal year)

	1994	1995	1996	1997	1998	1994-1998
S. 257						
Receipts						
Royalties	0	0	0	-82	-82	-164
Holding fees	0	-10	-10	-85	-85	-190
Direct Spending from Receipts						
Payments to states	0	0	0	21	21	41
Authorized Spending from Receipts						
Reclamation spending	0	10	10	126	126	272
President's Proposal						
Receipts						
Royalties	0	-35	-69	-138	-138	-380
Holding fees[a]	-57	-57	-57	-57	-57	-285
Direct Spending from Receipts						
Payments to states	0	8	16	32	32	87
S. 775						
Receipts						
Royalties	0	0	0	0	0	0
Holding fees	-30	-30	-30	-30	-30	-150
Direct Spending from Receipts						
Payments to states	10	10	10	10	10	50
Authorized Spending from Receipts						
Reclamation spending	20	20	20	20	20	100

SOURCE: Congressional Budget Office.

NOTE: Estimates do not include additional collection and administrative costs that would result from these royalties and fees. Additional receipts and direct spending in each proposal would be directly attributable to the authorizing legislation. Reclamation spending would be subject to future appropriations action.

a. The President proposes to commit about $17 million annually of these holding fees to cover certain collection and administrative costs.

S. 775 generates no receipts from royalties during this period because the bill's royalty provisions only apply to newly located claims, and CBO expects that new claims would yield virtually no production before the end of fiscal year 1998. Even if applied to existing mines, royalties from S. 775 would be substantially smaller than from the other proposals--generating receipts of less than $5 million annually--because the royalty rate is lower and the base to which the royalty is applied is significantly smaller than in the other proposals. Furthermore, states would receive a larger share of the total receipts from royalties than in the other proposals (one-third under S. 775, compared with one-quarter in the other proposals).

Over the 1994-1998 period, receipts from holding fees under S. 257 would total an estimated $190 million. Holding fees in the President's proposal would generate receipts estimated to be $285 million. Assuming the bill is effective by fiscal year 1994, federal receipts from holding fees in S. 775 would total an estimated $150 million over the same period, and from this amount states would receive $50 million. Estimates of the receipts from holding fees resulting from S. 775 are particularly uncertain because of poor information about how many claims are currently held by small claimants who would be exempt from the fees.

Assumptions and Methods
Underlying Estimates of Royalties and Holding Fees

Estimating the effect of mining law reform is difficult principally because no comprehensive data exist on hardrock mining on public lands. The Department of the Interior (DOI) is now working on, but has yet to provide CBO with, an estimate of the value of hardrock minerals produced on public lands. Furthermore, the lack of data makes it hard to predict how many claimholders would choose to maintain their claims when faced with paying an annual rental or holding fee. Better information from the agencies responsible for overseeing activities on public lands would provide a more reliable basis for estimating budgetary effects and making policy judgments in this area.

Three key assumptions underlie our estimates of receipts from royalties. They are the value of minerals extracted from public lands, the effect of royalties on production and prices, and the base to which the royalty rate is applied.

The critical assumption in estimating receipts from rental rates or holding fees is how claimholders would respond to such fees. The

estimates of royalties and holding fees follow fairly directly from the assumptions made about the factors that affect them.

The Value of Minerals Extracted from Public Lands. CBO assumes that the value of annual production from public lands subject to royalties under S. 257 and the President's proposal would total about $1.2 billion. This estimate is based on a General Accounting Office (GAO) study that surveyed Western mining operations involving the production of eight minerals.[1] The study did not cover all mining operations or all minerals--which suggests the GAO figure may be conservative--but it did include copper and gold production, which accounts for a large percentage of the value of hardrock minerals produced on public lands.

Furthermore, the large number of patent applications recently filed and pending approval at the DOI (450 applications covering about 150,000 acres) suggests that a significant amount of federal land now producing hardrock minerals may move into private hands before any of the proposals could become law. If so, the value of production ultimately

1. General Accounting Office, *Value of Hardrock Minerals Extracted from and Remaining on Federal Lands*, RCED-92-192 (August 1992).

subject to a royalty could be significantly lower than many expect, at least over the next five years.

How Royalties Would Affect Minerals Production and Prices. CBO assumes that an 8 percent royalty on gross income would result in a 5 percent drop in production in the short run from federal lands. This response is based in part on data reported in a University of Nevada study on average operating costs for gold mines and in part on an analysis of production and price data for other important hardrock minerals.[2] We further assume that mineral prices will remain generally stable between 1994 and 1998.

A 12.5 percent royalty on gross sales, as proposed in the President's budget, would result in a drop in production of less than 8 percent. For a 2 percent royalty on net value at the minemouth, as proposed under S. 775, CBO assumes there would be no effect on current mining output.

2. John Dobra and Paul Thomas, "The U.S. Gold Mining Industry 1992" (University of Nevada, Reno, Mackay School of Mines, Nevada Bureau of Mines and Geology, Special Publication 14, 1992).

The Base Used to Calculate Royalties. The proposals we reviewed differ significantly in the bases to which the royalties would be applied. To prepare our estimates, we proceeded as follows:

- For the President's proposal, the base for estimating royalties is the gross sales of minerals produced on federal lands, assumed to be $1.2 billion annually;

- For S. 257, the base for calculating royalties--referred to as "gross income" in the bill--is assumed by CBO to be gross sales less costs of smelting, refining, and transportation. For these estimates, we assumed that gross income is 90 percent of the gross sales from federal lands.

- For S. 775, the base for royalties is net proceeds from mining activities prior to smelting and refining--referred to as "minemouth value" in the bill. This base approximates gross income, as estimated for S. 257, less the costs of mining activities. Using data from the Bureau of Mines, we assumed this royalty base would be about 20 percent of gross sales from federal lands.

How Current Claimholders Would React to New Holding or Rental Fees. CBO assumes that in the short run about 60 percent of the existing claims of record at the end of fiscal year 1992 would be relinquished when claimants are faced with paying the annual holding fees proposed in S. 257 and the President's budget. We believe that a significant number of claims are being held for speculative purposes and that many current claimholders are likely to drop marginal claims rather than pay to hold them. Some of these claims are likely to be located and staked again in later years. We assume that fewer claims would be relinquished under S. 775 because small claimholders are exempt from fees and medium-sized claimholders would pay a considerably smaller fee than in S. 257.

EFFECTS ON JOBS IN MINING REGIONS

Paying royalties would reduce returns to mining operations. Depending on the royalty rate and the base to which it is applied, this reduction could discourage the development of new mines and could reduce the rate of production in existing mines and hasten their abandonment. Less mining would lower employment in areas in the West where such mining takes place. Effects would be direct--from less mining activity--and

indirect--from lower demand in the mining regions for the goods and services provided to mining firms and their employees.

Holding fees would have little or no direct effect on production or employment in mining. However, both holding fees and royalties would reduce the profits of mining firms and, consequently, the incomes of their shareholders. Also, holding fees would reduce the net incomes of individual claimholders. Reduced spending by the shareholders and individual claimholders could cause an additional secondary reduction in employment. Much of this reduction would probably occur outside of the mining regions, however, because many of the shareholders of mining firms do not live in mining areas.

These negative effects of mining reform on employment in the mining regions are only part of the story. In the proposals being considered, some of the gross receipts the federal government receives are returned directly to the states. S. 257 and S. 775 also authorize additional spending for reclamation of abandoned mines from the remainder of gross receipts. Both of these transfers to the states could increase employment, offsetting part or all of the decline in employment attributable to the royalties or fees. But even if the net effect of these proposals were to

cause no change in employment in the mining regions, individual miners and communities could be adversely affected.

CBO has not estimated the nationwide effect on employment of these proposals to reform the mining law. As mentioned earlier, the effect on the entire economy would probably not differ greatly from the effect of any other deficit reduction measure, and CBO's practice is to analyze the economic effects of a deficit reduction plan, such as reflected in the Congressional budget resolution, only on an aggregate basis.

CBO has estimated the direct and indirect effect of a reduction in mining activity caused by the reform proposals on employment in the mining regions. We have also prepared estimates of increases in employment in the mining regions that could result if states spent their share of new receipts and if the amounts in the proposals authorized for reclamation activities were to be appropriated. We do not have enough information to estimate the employment losses in the mining regions caused by the drop in incomes of shareholders of mining firms and of individual claimholders. Lacking this information means we have no firm conclusion about the effect of these proposals on regional employment.

Estimated Effects on Regional Employment of Reduced Mining Activity

CBO estimates that the losses in regional employment related to reduced mining activity under S. 257 would be between 800 and 2,000 jobs. (These estimates include information we recently received from the Bureau of Economic Analysis and indicate a greater range of uncertainty than we presented in testimony last month before this Subcommittee.) The direct losses of employment in mining would be between 400 and 800 people. In addition, indirect effects on regional employment would come in the industries that provide goods or services to the mining firms and to the employees of those firms.

The job losses associated with the President's proposal would be larger--between 1,300 and 3,200 jobs--because the larger royalty rate would cause a greater reduction in mining activity. S. 775 would have little or no noticeable effect on employment in mining because, as a royalty on profits, it would have little effect on production from mines. Although these effects on regional employment are small from the perspective of the entire economy, the affected communities may consider them large.

To obtain those estimates, we assumed that the direct and indirect job losses in Western states from reduced activity in hardrock mining would be between 14 and 33 workers for each $1 million drop in mining output.

The range of losses in employment associated with lower mining output reflects the general range for total employment multipliers estimated for 12 Western states by the Bureau of Economic Analysis. These estimates represent updates from the values assumed in our March 16 testimony before this Subcommittee. Those earlier values, ranging between 15 and 25 workers, had been reported by the Bureau of Economic Analysis in May 1986.

Estimated Effects on Regional Employment
of Increased Spending by States and Spending on Reclamation Activities

Significantly, some or all of the adverse effects of royalties on jobs could be offset by jobs created by the uses to which states put their share of royalties and the use of funds authorized for reclaiming abandoned mines. Each of the three proposals for mining reform contains some provision for such disbursements.

Under S. 257, between $20 million and $150 million per year could be spent in mining states, depending on how much of the amounts authorized for reclamation activities is appropriated. These outlays could add between 300 and 4,900 jobs in the mining states. The upper range for spending reflects an update to the estimate we provided to this Subcommittee in earlier testimony. That earlier estimate omitted the $85 million in revenues from holding fees, all of which would go to the abandoned mines fund. The upper range for job gains is larger because of the higher spending figure and the use of a revised and higher employment multiplier.

Thus, under S. 257, the potential gains in regional employment from increased spending may be larger than potential losses from lower mining output. This result is an outcome of our basic assumption that hardrock mineral production would not change very much with an 8 percent royalty on gross income and not at all from holding fees, even though the royalty and holding fee would generate a significant amount of money.

The President's proposal contains no provisions for spending for reclaiming mines. Hence, the direct stimulus it provides to mining states

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would come only from the 25 percent of royalties shared with the states, which, according to our estimates, could be between 450 and 1,100 jobs.

Under S. 775, an estimated $30 million per year could be spent in the states--if the maximum amount authorized is made available. This spending could create between 400 and 1,000 jobs.

To make these estimates, CBO assumed that the same multipliers used for assessing the adverse impacts on regional employment of lower mining activity from royalty reform are useful for assessing the positive impacts of higher reclamation and other state spending. The estimates also assume that the states spend these funds.

As stated previously, this is not the complete story about effects of these mining reform proposals on jobs in mining regions. We have not estimated the effect within the mining areas of reduced incomes of shareholders of mining firms and individual claimholders.

CHOOSING THE BASE FOR ROYALTIES

Royalty proposals differ both in the percentage rates and in the bases to which they are applied. The choice of the base is important both for reasons of efficiency and for the cost of administering and assuring compliance with the royalty. One method of computing royalties would be more efficient than another if it would cause fewer changes in production levels and fewer changes in mining practices or the organization of mining firms than otherwise. Administrative costs can differ greatly--generally the simpler the base, the easier and cheaper it would be to administer.

Among the bases that could be used for assessing royalties on hardrock mining are first, gross sales by the mining firm; second, gross income of the firm attributable to specific mining operations of the firm; and third, net proceeds from mining operations of the firm.

Gross Sales of Refined Minerals

In this case, the royalty would be applied to the gross sales of the firm--measured as the market value of a refined product. These sales receipts include returns to mining and nonmining activities of the firm.

A division of functions of mining firms between these activities is specified in Department of Treasury regulations implementing the tax code. Mining activities include in-mine operations, crushing, grinding, and beneficiation processes such as cyanide leaching. Smelting and refining operations and transportation to market are defined as nonmining operations.

A royalty based on gross sales would be the easiest to administer of the three approaches considered here because market prices and sales volumes are easily validated. Such a royalty would not affect the production practices of mine operators, but would affect the profitability of mines. Some mines with high combined costs for mining and nonmining activities might become unprofitable if this type of royalty were imposed, depending on the royalty rate. Such mines might shut down earlier than they would otherwise, or might not be developed in the first

place. CBO assumed that the royalty in the President's proposal would be applied to gross sales.

Gross Income Attributable
to Specific Mining Operations of the Mining Firm

S. 257 identifies gross income as the basis for royalties. Using the definition of gross income in the tax code, gross income from mining would be smaller than gross sales. For purposes of determining the percentage depletion credit, mine owners calculate gross income as the product of gross sales and the ratio of mining costs to total mining and nonmining costs. We assume that mining and nonmining costs are only those associated with the specific activities described above. This calculation allocates total returns, including profits, between the two categories of activities.

Royalties based on gross income may be easy to administer if the royalty base adheres to the definitions in the tax code--the Internal Revenue Service already validates these numbers in confirming claims for the depletion allowance.

A royalty based on gross income would affect firms differently than a royalty based on gross sales. Among firms mining the same mineral, this royalty would create a greater burden for those with a greater proportion of total costs stemming from mining activities. Among minerals, those with relatively high mining costs, such as gold, would pay a greater share of the total royalty than would firms with high nonmining costs, compared with a royalty on gross sales. There is no apparent economic rationale for such differences.

Moreover, a likely result of a gross income royalty would be to raise incentives, to the extent it is technically feasible, for mine operators to perform less crushing and mineral concentration work--the income from which would be subject to royalties--and perform more smelting and refining work. This type of change in production operations would raise costs unnecessarily.

Net Proceeds from Mining Operations

The term net proceeds is defined in many ways. In S. 775, the royalty would be applied to the difference between gross income and mining costs

(presumably as defined in the tax code). That calculation of net proceeds yields a value that comes closer to approximating the profits from mining activities than either the gross sales or the gross income basis. In theory, such a royalty base would not make any existing mines unprofitable. Taxing only the profits from mining would allow all existing mines to continue to cover their operating costs, so none would lower its output or close prematurely.

In practice, however, the definition of net proceeds in S. 775 is sufficiently ambiguous that actual gross income and calculations of mining costs by mine owners will be unlikely to yield a value that even closely approximates their actual profits from mining. One reason is the gross income value that is part of the S. 775 formula for net proceeds may improperly allocate some fixed and variable costs to mining activities along with profits. Also, the arbitrary distinction between mining and nonmining activities presents mine operators with an incentive to alter their choices of processing technologies in an inefficient manner. (Generally accepted accounting principles do not rigorously define mining and nonmining technologies.)

CBO TESTIMONY

Statement of
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before the
Subcommittee on Mineral Resources
Development and Production
Committee on Energy and Natural Resources
United States Senate

March 16, 1993

NOTICE

This statement is not available for public release until it is delivered at 9:30 a.m. (EST), Tuesday, March 16, 1993.

CONGRESSIONAL BUDGET OFFICE
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Mr. Chairman and Members of the Subcommittee, I appreciate the opportunity to discuss reforms of the Mining Law of 1872. My testimony today will focus on proposals to impose royalties on hardrock minerals extracted from public lands and to charge holding fees or rents on claims that are not yet producing minerals.

The Congressional Budget Office (CBO) has prepared estimates of the effects on the federal budget of royalties and fees included in the President's budget and in S. 257, the Mineral Development and Exploration Act of 1993. In my testimony, I will describe these estimates.

Poor data about mining on public lands and the characteristics of current claimholders make it hard to estimate the effects of these proposals. I will explain the assumptions that we made about the value of minerals now taken from public lands, about how production would change if royalties were introduced, and about how current holders of undeveloped claims would respond to new holding fees. Our assumptions lead to estimates of the federal receipts stemming from royalties and holding fees that are lower than those prepared by the Administration for its proposal.

WHAT IS THE RATIONALE FOR ROYALTIES AND HOLDING FEES?

The argument most often heard supporting the collection of royalties for minerals extracted from public lands and charging holding fees is that they would help ensure that the public would receive "fair-market" compensation for the use of public resources. Current law gives precedence to mining over other uses on a large portion of federally owned lands, and nothing is charged for extracting hardrock minerals.

Many people consider the current practice to be an unneeded and unfair subsidy to the mining industry in the United States. Removing this subsidy by charging for the resources and the use of the land would be fair, in their view, because it would provide a return to the public. This return would come directly through receipts to the Treasury and indirectly through reducing the advantage that mining has over other uses of federal lands.

A second rationale for imposing royalties or fees is that they would help reduce the federal budget deficit. Because it would increase the nation's rate of saving and promote long-term improvements in the

standard of living of U.S. citizens, reducing the deficit is an important national objective. Royalties and fees could contribute to this objective.

In S. 257 and in the President's proposal, 25 percent of the gross receipts from royalties would be shared with the states. S. 257 also would authorize 50 percent of the gross receipts to be spent for reclamation of abandoned mines. The effect of S. 257 on the deficit would be reduced if the amounts authorized are appropriated.

Arguments in favor of royalties or holding fees go beyond generating revenues or prohibiting private firms from selling public resources without charge. Royalties or fees are prices, which in our economic system help allocate resources among various uses, improving the efficiency of their use in producing national output or promoting social welfare. There are a number of efficiencies that stem from royalties and holding fees.

Proper Pricing Would Help Allocate
Public Lands to Their Most Desirable Uses

Holding fees would create an incentive for present holders of claims to develop them, make them available for someone else who would develop

them, or relinquish them. We believe that the incentive created by holding fees to develop the claims would have minimal effect on production. In preparing our estimates of receipts from holding fees, we have assumed that many current claims would be relinquished.

The ease with which holders can keep claims, even with no intention of developing them, has caused problems both for mining companies that want to develop resources and for government. Causing claims to be abandoned would release these public lands for other uses, which might include other mining activities, recreation, or conservation of this land as undeveloped wilderness.

When the Mining Law was passed in 1872, it contained a provision for diligent development of the resources once minerals were discovered. Claimants were required to perform at least $100 of work a year per claim. In those days, that amount corresponded to about seven weeks' effort at mining and--considering the short period available for activity at many mining sites--represented a substantial level of effort. Today, the requirement is still set at $100 for development. These charges at today's prices now represent a mere token effort.

The original intent of the requirement for diligent development was to discourage claimants from holding undeveloped property. The proposed holding fees differ in many respects from the requirements for diligent development, but would similarly encourage claimholders to release claims on which they have no intention of mining.

Royalties could have a similar effect. Mining activities that are near the margin of profitability might be abandoned or remain undeveloped. If the royalties or fees were set to reflect accurately the alternative public value of the land, then abandoning some mining activities would probably add to social welfare.

Currently, regulation heavily affects land use. For example, some areas are closed to prospecting and mining activities. Moreover, federal and state environmental regulations affect how land is developed. Royalties may not be a substitute for planning the uses of public lands, but they would reduce mining on some lands that would not be mined if mine operators had to pay fair-market rates for the resources extracted.

Proper Pricing Would Reduce the Rate at Which Mineral Resources Are Exploited

Royalties would tend to slow down the rate of development and extraction of minerals from federal lands. Because no royalties are charged, mining companies have a greater incentive to develop and extract minerals from federal lands than on private or state lands where royalties typically apply. Moreover, charging nothing for the minerals may cause them to be extracted now, rather than later, when they might be more valuable to our economy. How fast our mineral or other resources should be used up is a very complex subject. But faster is not always better.

Proper Pricing Would Charge Miners for Some of the External Effects on the Environment

Mining and exploration have done substantial damage to public lands and the ground- and surface-waters on those lands. Current mining activities on public and private lands are subject to a number of federal environmental regulations introduced in the past several decades. Federal laws that apply to mining activities and that affect the costs of operating

mines include the Safe Drinking Water Act, the Clean Water Act, and the Clean Air Act. Some of the wastes associated with mining are subject to regulations stemming from the Resource Conservation and Recovery Act. State regulations also apply.

Environmental hazards created by past mining activities--mostly ground and surface water pollution--are subject to regulation under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, or Superfund). This law gives the Environmental Protection Agency the right to locate parties who are responsible for the hazard and requires them to pay for cleanup. It is now difficult to identify private parties responsible for environmental hazards at abandoned mining sites on public lands--especially those private parties in a position to pay for cleanup. The federal agencies that manage the lands--ultimately meaning the federal taxpayer--may end up paying for cleanup at many abandoned mining sites.

Beyond the issue of hazardous wastes, reclamation of mined sites is an issue important to proponents of the reform of mining law. Reclamation requirements and authorization of funds to help pay for reclaiming abandoned sites is, for example, contained in S. 257. The

authorized funds would come from the new royalties introduced by the bill.

Aside from being a potential source of funds for cleanup, royalties or other fees would have few beneficial effects on the environmental damage caused by mining activities, since a relatively small reduction in mining activity is expected to result from royalties. The environmental effects of royalties might be positive, but royalties of this magnitude should not be seen as an effective policy tool to achieve environmental goals.

Pricing of Hardrock Minerals Would Make the Treatment Among Federally Owned Resources More Consistent

Hardrock minerals on public lands are treated differently from other minerals. The Mining Law that now applies to hardrock minerals originally applied to all minerals on lands in the public domain. However, subsequent legislation has changed the conditions of access to other mineral resources.

Most important, the Mineral Leasing Act of 1920 distinguished locatable from leasable minerals. Locatable minerals are the hardrock minerals that are the focus of the Senate and Administration proposals. Leasable minerals include coal, oil, and gas. For these fossil fuels, subsequent legislation has defined competitive processes for obtaining leases, established diligence requirements for developing the leases, and required the payment of royalties. The rate of royalties for federal coal is 8 percent; for onshore oil and gas, 12.5 percent; and for offshore oil and gas, 16.7 percent. Although the most common process for obtaining oil and gas leases is the competitive bonus bid with a fixed royalty, other competitive and noncompetitive processes are allowed under the law.

Hardrock minerals are not the only public resource for which there is interest in capturing some of their economic value on behalf of the taxpayer. For example, both the current and previous Administrations have called for auctioning parts of the electromagnetic spectrum for private use--rather than continuing to give it away through a lottery. The winners of these lotteries frequently turn around to sell the rights at considerable profit. The Congress is presently considering legislation that would permit such auctions.

In the same manner, a federal royalty scheme for extracting minerals would permit the taxpayer to share in these gains, rather than having the benefits accrue to a speculator who filed a claim in anticipation of being bought out. In fact, the major developers of minerals often pay a substantial amount to acquire mineral rights from current claimholders, or they pay royalties to these claimholders when they undertake development.

EFFECTS OF ROYALTIES AND HOLDING FEES ON U.S. MINING FIRMS AND EMPLOYMENT IN THE INDUSTRY

Imposing royalties on minerals extracted from public lands would reduce returns to mining operations. In turn, this reduction would discourage the development of new mines and could reduce the rate of production in existing mines and hasten their abandonment. Less activity in mining could reduce employment and hurt the economies of areas in the West where such mining takes place. Holding fees would have little or no direct effect on production or employment in mining. Use by the states of their share of the royalties collected and new reclamation activities, if any, could offset a large part of the economic effect of reduced mining activity.

Unfortunately, the information required to analyze these effects fully is poor or lacking entirely. I will briefly review, however, some of the expected economic effects of royalties and holding fees and comment on an economic study that looks specifically at some of these issues in gold mining.

The Effects of Royalties on the Decision to Mine on Federal Lands and on the Production of Existing Mines

Royalties can affect development of potential mines, the rate of production at existing mines, and the decision about when to abandon an existing mine. The decision to establish a new mine on federal lands is based largely on its expected profitability. Royalties would reduce expected profits in a way similar to a drop in the expected market price for the mineral and may make some new projects unprofitable.

For existing mines, introducing royalties would have different qualitative effects: subsequent production levels would tend to be lower in all periods, mines might be abandoned sooner than otherwise, and as a result more resources would be left in the ground. Higher-cost mines would scale back their operations the most. For most mines, this step

would not mean abandoning them immediately, but rather closing them earlier--say, 10 years in the future rather than 15 years.

CBO has not conducted its own analysis of the effects of royalties on mining activity in federal lands. Compounding the problem of poor data has been the tremendous impact of recent technological changes, which have led to rising production of gold, for example, even in the face of static or falling prices. To understand how a royalty could affect hardrock mining, we reviewed several studies of mining costs in the United States. These studies covered mining on both public and private land, not just mining on federal lands.

One particularly useful report by the University of Nevada summarized data on average operating costs for 51 mines accounting for about 90 percent of total U.S. capacity for primary gold production. Using data from this study on average operating costs of mines in 1990, we conclude that an 8 percent drop in gold prices would probably have a small effect on production. The 8 percent price drop means that mines accounting for 1 percent to 2 percent of total production that year would not cover their reported average operating costs. An 8 percent drop in gold prices would be equivalent to an 8 percent royalty if the market price

of gold were left unchanged by the resulting drop in production. U.S. prices of gold and most other minerals extracted from federal lands are determined on world markets and would not be affected by relatively small cuts in U.S. production.

The implication to be drawn from this exercise is that the effects of an 8 percent royalty on production from these mines could be small. How this implication might apply to gold mines on federal lands or even more broadly to all mines on federal lands is hard to determine. We know little about differences in costs between mines on federal and private lands.

On the one hand, these values could overstate the actual response of supplies to a royalty. One reason is that some elements of a mine's operating costs (for example, corporate tax payments) would drop along with net proceeds. Another is that varying production costs would themselves fall as mines lowered their output, thereby offsetting the cut into average profits.

On the other hand, the total response of mineral supplies from federal lands may be greater than indicated by the example of gold since

the production of other important minerals (such as copper, silver, and lead) is likely to respond more to a price change than would gold.

For our estimate of receipts from royalties, CBO has assumed that the drop in production from mines on federal lands would be several times greater than inferred from the data on gold mines in the study mentioned. We have assumed that an 8 percent royalty would cause a 5 percent reduction in the value of production of mines on federal lands.

The Effects of Holding Fees on Production and Abandoning Claims

The effect on the industry of introducing holding fees would be different from that of royalties. Three things could happen, depending on the level of the fee. First, such fees could encourage the claimholder to begin development because the fees would impose a cost of delay not now present. Of the possible reactions of claimholders to the new fees, this possibility--immediate development--is probably the least likely for the simple reason that the benefits of avoiding payment of the proposed holding fee would be small relative to the costs of initiating production prematurely.

Second, the claimholder could continue holding the land without developing it. By so doing, the claimholder would indicate that he or she believes that the prospects for future profit from developing (or selling) the claim exceed the newly imposed cost of holding it. For many, holding a claim is an investment with an uncertain future payoff. The investment now has small carrying costs.

The third alternative for the current claimholder is to avoid paying the holding fee by releasing the claim. It would then be available for competing businesses or for different uses altogether--again, to be developed immediately or held.

The most likely immediate result of introducing holding fees would be that small claimholders would release or immediately sell many claims, with some of those released claims ending up in the hands of larger mining interests. This outcome would take place if small holders of claims find that the cost of the proposed holding fees exceeds the value they placed on those claims--on the basis of expected returns from either mineral or nonmineral uses (for example, recreational). Even larger firms could find it in their interest to give up some marginal claims.

CBO has not conducted a quantitative analysis of the effects of holding fees on the mining industry. To estimate receipts from holding fees, we have assumed that a substantial proportion of claims would be abandoned. This is a conservative assumption of its effect on federal revenues. Regardless of the number of claims that would actually be returned to the government as a result of this policy change, however, it is hard to see how production of minerals or employment in the industry could be adversely affected.

The Effect of Royalties on Regional Economies and Employment

Any reduction in mining activity that resulted from newly imposed royalties would reduce employment and incomes in the affected areas. The direct effect of royalties could be mitigated by the states' use of their share of the receipts--in S. 257, 25 percent of the royalties collected are remitted to the states; a similar portion is shared with the states in the President's proposal.

S. 257 also authorizes spending 50 percent of the total royalties collected for certain reclamation activities. Spending for reclamation is

subject to annual appropriations, but if these funds are made available, a large share of the detrimental effect of royalties on employment and incomes could be offset. Some portion of the expected increase in federal costs of administering the royalties and holding fees would also accrue to the affected areas.

CBO has prepared an illustrative analysis of the effects that royalties might have on incomes and employment in the affected areas. For purposes of this illustration, CBO assumed that imposing an 8 percent royalty would cause a 5 percent reduction in the value of production from mines on federal lands. This loss would amount to about $60 million annually, based on an assumed level of total annual production on federal lands of $1.2 billion--the value of production assumed in the CBO estimate of receipts that would be generated from a royalty.

Such a loss in direct output would have subsequent effects on other economic activities in the affected states. Department of Commerce estimates of regional economic multipliers for "miscellaneous" mining (which excludes oil, gas, and coal) give an idea of how the region might be affected. These multipliers indicate the relationship between a change in the value of output from mining and the total direct and indirect

change in value of local output and employment by industries providing intermediate goods and services to the mining industry. The values are imprecise for the purpose of this analysis, since statistics for minerals of greatest economic interest on federal lands are combined with those for iron and aluminum.

The overall multipliers suggest that a $1 million reduction in the value of miscellaneous mining in the major hardrock mineral-producing states could lead to a total loss in output of $1.5 million to $2 million (including the direct $1 million in mining). The associated losses in employment would be 15 to 25 jobs. These values do not include losses for businesses or local governments that do not provide goods or services directly or indirectly to mining but that, nevertheless, depend on the incomes of mine owners and their employees.

Applying these multipliers to the assumed $60 million direct loss in mining output that results from imposing royalties indicates a total loss (direct and indirect) of between 900 and 1,500 jobs and a total loss of economic output of between $90 million and $120 million.

These estimates do not include the compensating effects of increased spending from the royalty proceeds, with their multiplier effects. Of the $90 million gross royalty receipts that we estimate the Senate proposal would generate each year, 25 percent would be returned to the states. Another 50 percent would be designated for the abandoned mineral mine reclamation fund, although spending from that fund would be subject to annual appropriations.

Thus, depending on actual spending on abandoned mines, between $20 million and nearly $70 million could return to be spent in mining states. This money could add between 300 and 1,700 jobs, and compensate regional economies with added economic output of between $30 million and $140 million.

The preceding estimates suggest the net result of direct and indirect effects of royalties on economic activity and employment may be relatively small. As indicated earlier, these estimates are far from firm. Moreover, even if the net economic effects in the region were to be small, individual workers, some mining support industries, and particular communities might still undergo painful adjustments.

ESTIMATES OF THE BUDGETARY EFFECTS OF ROYALTIES AND HOLDING FEES

The Congressional Budget Office has prepared preliminary estimates of the effects on the federal budget of the royalty and fee proposals contained in S. 257. The bill would establish an escalating annual rental payment for all hardrock mining claims and would impose a royalty totaling 8 percent of the gross income from production on public lands.

The President proposes to make permanent the temporary $100 per claim annual holding fee now in force. The President also proposes a 12.5 percent royalty on the value of production to be phased in gradually over the three-year period beginning in 1995 (see Table 1 for CBO's estimates of these proposals and the Administration's estimate of receipts from its proposal).

CBO estimates that over the five-year period beginning in 1994 the royalty provisions contained in S. 257 would increase federal receipts, net after payments to states, by about $140 million. This estimate does not reflect the costs of any new reclamation activities authorized in the bill. The holding fees established by the bill would produce net receipts totaling an estimated $190 million over the same period.

TABLE 1. ESTIMATED NET FEDERAL RECEIPTS FROM ROYALTIES AND HOLDING FEES (In millions of dollars by fiscal year)

	1994	1995	1996	1997	1998	1994-1998
Preliminary CBO Estimates						
S. 257						
Royalties[a]	0	0	0	70	70	140
Holding Fees	0	10	10	85	85	190
President's Proposal						
Royalties[a]	0	28	54	106	105	292
Holding Fees[b]	57	57	57	57	57	285
Administration Estimates						
President's Proposal						
Royalties[a]	0	63	131	277	277[c]	748
Holding Fees[b]	97	97	97	97	97	485

SOURCES: Congressional Budget Office; Office of Management and Budget.

NOTE: Estimates do not include additional collection and administrative costs that would result from these royalties and fees.

a. Royalty amounts shown represent the federal share of receipts after making required payments to states.

b. The President proposes to commit about $17 million annually of these holding fees to cover certain collection and administrative costs.

c. Pre-filed versions of this testimony incorrectly reported this value as 471.

We estimate that royalties in the President's proposal would increase federal receipts, net after payments to states, by $292 million through 1998. Over the same period, we estimate that the holding fees in the proposal would yield receipts of $285 million.

Assumptions Underlying the Estimates

As discussed earlier, estimating the effect of mining law reform is difficult principally because no comprehensive data exist on hardrock mining on public lands. The Department of the Interior (DOI) has been unable to provide an estimate of the value of production of hardrock minerals on public lands. Furthermore, the lack of data makes it hard to predict how many claimholders would choose to maintain their claims when faced with paying an annual rental or holding fee. Better data from the agencies responsible for overseeing activities on public lands would provide a more reliable basis for estimating budgetary effects and making policy judgments in this area.

Three key assumptions underlie our estimates. They involve the value of minerals extracted from public lands, the effect of royalties on

production and prices, and the response of claimholders to new holding or rental fees.

The Value of Minerals Extracted from Public Lands. CBO assumes that the current value of annual production from public lands totals about $1.2 billion. This estimate is based on a General Accounting Office (GAO) study that surveyed Western mining operations involving the production of eight minerals.[1] The study did not cover all mining operations or all minerals--which suggests the GAO figure may be conservative--but it did include copper and gold production, which accounts for a large percentage of the value of hardrock minerals produced on public lands.

Furthermore, the large number of patent applications recently filed and pending approval at the DOI (450 applications covering about 150,000 acres) suggests that a significant amount of current production on federal lands may move into private hands before S. 257 or the President's proposal could become law. If so, production of hardrock minerals ultimately subject to a royalty could be lower than many expect.

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1. General Accounting Office, *Value of Hardrock Minerals Extracted from and Remaining on Federal Lands*, RCED-92-192 (August 1992).

How Royalties Would Affect Minerals Production and Prices. CBO estimates that an 8 percent royalty would result in a 5 percent drop in production in the short run from federal lands. This response is based in part on data reported in a University of Nevada study on average operating costs for gold mines and in part on an analysis of production and price data for other important hardrock minerals.[2] We further assume that mineral prices will remain generally stable between 1994 and 1998.

How Current Claimholders Would React to New Holding or Rental Fees. CBO assumes that in the short run about 60 percent of the existing claims of record would be relinquished when claimants are faced with paying an annual rental or holding fee. We believe that a significant number of claims are being held for speculative purposes and that many current claimholders are likely to drop marginal claims rather than pay to hold them. Some of these claims are likely to be located and staked again in later years.

2. John Dobra and Paul Thomas, "The U.S. Gold Mining Industry 1992" (University of Nevada Reno, Makay School of Mines, Nevada Bureau of Mines and Geology, Special Publication 14, 1992).

Differences Between S. 257 and the President's Proposals

The estimated budgetary effects of the two proposals differ primarily because of differences in the royalty rate, the holding fees, and the effective dates of the provisions.

The royalty rate in S. 257 is 8 percent of gross income and would not become effective until fiscal year 1997. The President proposes a royalty rate of 12.5 percent that is phased in over three years beginning in 1995. CBO estimates that receipts from the President's proposal would exceed those from S. 257 by about $150 million over the five-year period for this reason.

The holding fee (or rental rate) in S. 257 would total $5 per acre for each of the first five years following location of a claim and would escalate in $5 increments every five years until it reached $25 per acre in the 21st year following location. Holders of new claims located after the bill's effective date (October 1, 1994) would begin paying the fee in fiscal year 1995. Existing claims would have three years to convert and would thus be subject to the rental fee provisions beginning in 1997.

72-558 O - 93 - 18

The fee proposed in the President's budget is quite different. It would be an extension of the $100-per-claim holding fee that was imposed on all existing hardrock mining claims in the 1993 Interior appropriation bill (Public Law 102-381). The President would commit some of these funds--about $17 million annually--to cover the administrative costs of the mining program. Annual receipts from these fees in 1998 are estimated to be about $30 million lower than receipts from holding fees in S. 257.

Differences Between CBO and Administration Estimates of the President's Proposals

CBO's estimates of the receipts generated by the royalty and holding fee proposals included in the President's budget are lower than those prepared by the Administration. The major sources of the differences in the estimated royalties are the following:

- The Office of Management and Budget (OMB) assumed that the current value of hardrock mining production on public lands totals about $3 billion annually. As explained above, CBO assumed an annual value of production of $1.2

billion. This difference is the principal reason why CBO's estimates are lower.

- OMB held production constant as royalties increased over time. CBO assumed that production would decline (about 8 percent for a 12.5 percent royalty) as royalties increase. This assumed decline also has the effect of lowering the estimate of receipts.

The major sources of differences in the estimated receipts from holding fees are the following:

- CBO assumes that more of the existing mining claims (up to 60 percent rather than 25 percent as estimated by the Administration) will be relinquished when claimants are faced with paying annual holding or rental fees.

- In its calculation of the number of mining claims that would be subject to annual fees, CBO accounts for the fact that some claims are administratively closed each year. This

assumption has the effect of further lowering the number of claims subject to the fee.

CONCLUSIONS

The proposed mining law reforms contained in S. 257 and the President's budget have a number of likely effects:

- They generate receipts to the Treasury that can be used for deficit reduction or other purposes, although CBO's estimates of receipts yields are smaller than the Administration's;

- They increase the efficiency and fairness of the way in which public resources are used; and

- They provide modest support to environmental objectives.

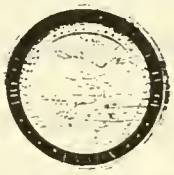
At the same time, they lead to economic costs and disruption:

- They will cause some loss of profits and drop in production--although the magnitude of loss appears to be relatively moderate. We estimate that output would drop about 5 percent with an 8 percent royalty (and 8 percent with a 12.5 percent royalty).

- The displacement of employees will generally be modest overall, although the local effects may be significant. Such local effects, if they occur, could be partly or fully offset, depending on the manner in which receipts from royalties are shared with states and the amount of employment that might accompany the provisions on abandoned mines of S. 257.

MEMORIAL 68

MOURYNE B. LANDING
CHIEF CLERK OF THE ASSEMBLY



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State of Nevada
Assembly

March 15, 1993

The Honorable Thomas S. Foley
Speaker of the House
U.S. House of Representatives
Washington, D.C. 20515-4705

Dear Mr. Speaker:

Pursuant to legislative direction, I enclose a copy of Assembly Joint Resolution No. 22, regularly passed by the 67th session of the Nevada legislature and approved by the Governor of the State of Nevada.

Yours sincerely,

Mouryne B. Landing
Chief Clerk of the Assembly

MBL:cm
Enclosure

Assembly Joint Resolution No. 22—Committee on Elections and Procedures

FILE NUMBER 26

ASSEMBLY JOINT RESOLUTION—Urging Congress to reject certain legislation related to mining.

WHEREAS, The Nevada Legislature passed Senate Joint Resolution No. 18 during the 1991 legislative session, urging Congress to reject legislation which would have repealed and reformed the general mining law as amended to the extreme disadvantage of many businesses and communities in the western states; and

WHEREAS, The 103rd Congress has seen the reintroduction of two bills, one in the House of Representatives, H.R. 322, and one in the Senate, S. 257, which would again attempt to repeal and reform the general mining law as amended; and

WHEREAS, H.R. 322 and S. 257 are in direct contradiction with the basic tenants of the general mining law which are essential to a viable mining industry, specifically granting freedom of access and the assurance that development and mining of mineral deposits can proceed according to all applicable laws and regulations without undue intervention; and

WHEREAS, Both bills provide for a royalty on the gross income from mineral production of not less than 8 percent, an extreme level which would result in the closure of mines and a significant reduction in exploration for new mines; and

WHEREAS, In 1992, approximately 58 percent of Nevada's total hardrock mineral production was produced on public lands and would be subject to the proposals currently being considered in Congress; and

WHEREAS, The State of Nevada estimates, based on a survey of the producers of 98 percent of Nevada's nation-leading production of gold and silver, that an 8 percent royalty in the gross value of production would result in the following decreases in the first year from current levels:

	From	To	Percent Decline
Direct Mine Employment:	8,930	7,480	16%
Production in Ounces of Gold:	6,541,000	6,091,000	- 7%
Mineable Reserves in Ounces:	81,961,000	72,061,000	12%
Number of Mining Claims Held:	40,362	23,856	41%
Net Proceeds of Mine Tax Paid:	$26,639,000	$23,140,000	13%
Sales and Use Tax Paid:	$44,617,000	$41,435,000	7%
Exploration Expenses:	$88,884,000	$62,245,000	30%
Capital Expenditures:	$620,064,000	$582,868,000	6%
Expenditures on Goods and Services:	$1,046,351,000	$950,357,000	9%

and long-term declines are anticipated to be more severe; and

WHEREAS, Other hardrock minerals produced in the state, including copper, lead, zinc, gypsum, barite and diatomite, together with substantial resources of tungsten, antimony, molybdenum and mercury would be similarly affected; and

WHEREAS, Any higher royalty on the gross value of production, such as the 12.5 percent royalty proposed in the Administration's budget, would result in even higher decreases in employment, economic activity, revenues to the State of Nevada, loss of exploration and the shortening of mine lives; now, therefore, be it

RESOLVED BY THE ASSEMBLY AND SENATE OF THE STATE OF NEVADA, JOINTLY, That the Nevada Legislature continues its rigorous objection to the proposed reformation of the general mining law and hereby urges Congress to reject the concept of a gross value royalty which is proposed in H.R. 322 and S. 257, and work toward a reasonable compromise with the mining industry; and be it further

RESOLVED, That the Chief Clerk of the Assembly prepare and transmit a copy of this resolution to the Vice President as presiding officer of the Senate, the Speaker of the House of Representatives, and each member of the Nevada Congressional Delegation; and be it further

RESOLVED, That this resolution becomes effective upon passage and approval.

STATE OF ARIZONA
DEPARTMENT OF MINES AND MINERAL RESOURCES
ARIZONA MINING AND MINERAL MUSEUM
Phone (602) 255-3791 1-800-446-4259 (IN ARIZONA ONLY)
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March 11, 1993

MAR 17 1993

The Hon. Richard H. Lehman, Chairman
Subcommittee on Energy and Mineral Resources
Committee on Natural Resources
United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

As Director of the Arizona Department of Mines and Mineral Resources, I believe it is my responsibility to transmit our viewpoint regarding legislation again introduced by Congressman Rahall that would drastically alter the General Mining Law of 1872. Since our agency has the responsibility to promote the development of mineral resources in Arizona, it should not come as any surprise that we are opposed to the radical revision proposed by H.R. 322, and, I might add, Senator Bumper's new bill S. 257.

I hope you will understand that our position is not simply one of arbitrary opposition because we like the way it has been done in the past. Quite to the contrary, our concern is not materially different than that expressed in the political world inside the beltway. It is a matter of serious concern that the economy of Arizona be allowed to continue to grow and provide good paying jobs for people, just as all of us want that to happen all over the United States. I am sure you share that concern.

The mining industry of Arizona provides directly approximately 19,000 jobs with above average pay. While much of the mining of the state is conducted on privately owned or patented land, a significant number of those jobs are at mines that are on lands administered by the U.S. Bureau of Land Management or the Forest Service.

It has been proposed by both Rahall and Bumpers that a minimum 8% to 12 1/2% royalty be attached to the gross value of all minerals that are produced on the public lands. It is fairly simple arithmetic to show that in most projects that are profitable, that royalty is equivalent to at least 16% of net. There are very few mining projects in Arizona that have a 16% margin on net earnings.

The end result of the imposition of this tax on the industry will be the cessation of mining on public lands. While it is difficult to determine a specific number, our Department

estimates that there will be a loss of over 2,000 jobs. A proportional loss in revenue to both State and Federal Government, and the losses to supporting suppliers will also occur. In fact, if the result of the institution of a $100 rental fee on all mining claims is any example, the imposition of a punitive royalty on minerals will create a loss of revenue to the Federal Treasury. By way of explanation, the rental fee caused a reduction in the number of claims held over on public lands in the fall of 1992 in Arizona. The impact felt was that the BLM received approximately $57,000 in fees in Arizona in 1992 compared to $167,000 in 1991. This is not good policy for anyone.

There are areas of interest in the General Mining Law that needs attention. In particular, the laws that already exist need enforcement. By that action, most of the land-use abuses could be stopped. The mining industry is open to significant revision of the law in the cost of acquiring a patent on the surface and mineral rights. They have proposed that the patent "purchase" price be based on real value of the land in question. It is also possible that the industry would work with the Congress to establish a reasonably royalty rate, particularly if it could have some flexibility that would allow room for the marginal projects. Laws governing environmental degradation and mitigation, especially in regards to water and air quality already apply to the industry. The industry has in fact been able to successfully clean up the water and air around currently operating projects. More than a billion dollars have been spent in Arizona alone during the last 20 years for that purpose. The industry has been working with the Environmental Protection Agency and the Western Governors' Association Mine Waste Task Force for about 5 years to develop a comprehensive mine waste management system that could be codified into rules and regulations by the various states and the EPA. Because each state has unique conditions, any such system should be originated and managed by the states within a basic framework of standards set by the cooperative effort of the Task Force and the EPA.

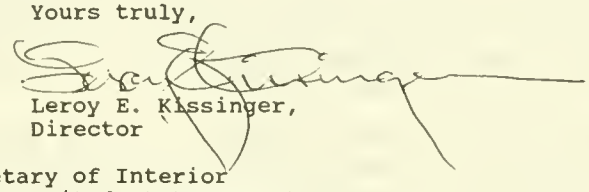
To impose the radical changes on the Western Mining States that are contained in both the Rahall and Bumpers offerings would cause serious damage to the economies and way of life of those states. It will also fail in the attempt to solve the federal budget problem by milking the mining industry. That cow of plenty will move to greener pastures outside of the United States. The greater good for the United States as a whole will be ill-served if either of the proposed bills pass Congress and are signed into law.

Your support for meaningful reforms to the existing law which will address some of the perceived concerns of members of Congress will be greatly appreciated. Reasonable reforms could

include: the payment of fair market value for mining claim patents; the establishment of an Abandoned Mined Lands fund from the revenues generated by a reasonable royalty based on net profits; implementation of federal reclamation and bonding requirements when there are no state requirements; and, a small miner exemption for miners who have less than 50 claims.

I urge you and your colleagues to consider this reasoned approach. Please don't kill a system that has served the industry and the country at large extremely well for over one hundred years because of the misinformation that has been promoted by a loud and mistaken minority, who want all mining to stop on the public lands.

Yours truly,



Leroy E. Kissinger,
Director

cc: Bruce Babbit, Secretary of Interior
J. Bennett Johnston, United States Senate
Daniel Akaka, United States Senate
Governor Fife Symington
The Arizona Congressional Delegation

TESTIMONY ON H R 322

C. C. HAWLEY, PH. D., INDEPENDENT MINING GEOLOGIST
Suite 300--941 E Dowling, Anchorage, Ak 99518
Phone 907-562-4673; Fax -907-7284

This testimony focuses on three areas where H R 322 is seriously flawed economically or scientifically: These areas are, first, the royalty and rental schedules; second, the adoption of a SMCRA type approach for the regulation of mine planning and reclamation, and third, assumptions that appear to drive unsuitability determinations with regard to riparian areas. The comments are from the standpoint of a geologist with extensive scientific and mining background. Since 1966, most of this experience is related to Alaska.

1.0 ROYALTY AND RENTAL ISSUES. H R 322 appears driven to a large extent by revenue needs of the federal government; it assumes that significant revenues can be gained by the imposition of rental fees and a gross-type royalty on minerals locatable under the General Mining Law.

In any analysis of potential revenues, most fees would be paid by large mining companies. However H R 322, with its emphasis on self-initiation, appears to assume that a future mining industry will be widely based similar to that of existing law where individual prospectors, small miners, explorers and large mining corporations have roles.

To a large extent, the revenue aims of the bill cannot and will not be met. Many others have testified on the loss of reserves and shrinkage of production that will occur nationally at 8% gross royalty. I would like to add to this testimony in one specific area, namely its effect on Alaska. Because Alaskan costs are appreciably higher than those of the contiguous states, a gross type royalty at any level will hurt Alaska more than the rest of the states. I am not aware of any Alaska hard rock or lode mine, either mined in the past or projected, that could pay an 8% royalty and produce ore at a profit. Conceivably some of the placer mines that operated in gold rush days were rich enough to, but no currently operating placer mine could pay an 8 percent royalty to the federal government and meet any other contractual obligations.

The main general point of testimony is that the royalty schedule knocks out prospectors and smaller mining companies that, apparently, the self-initiation features of the bill were designed to protect. At present, a prospector or junior mining company could obtain a net-smelter royalty in the range of 2-4% or a net carried interest of about 15% when a discovered valuable property is turned over to a major mining developer. There is nothing left at 8% gross; therefore the prospector will not

search. It is already difficult enough to find deposits that are economically viable. If the new royalty rates are added--the probability class for new economic deposits will move well past the 99th percentile. It has long been a rule of thumb that only one prospect out of a hundred is significant; under new rules, the ratio is changed to one in a thousand or perhaps one in ten thousand. It should be obvious that most of the high-grade and easy to find deposits in the United States have been discovered and most have been mined. A modern mining law should focus on discovery of even rarer deposits, not move in the opposite direction.

The holding fees also work against the prospector and small miner. It takes many years to quantify the reserve to the point that a prospect has value. Even though, under existing law, at least a prudent person discovery is necessary to hold a property, a new discovery does not have reserves attached. These are the product of years of detailed exploration and development. Until these reserves are quantified, the property has no real value. Under existing law, the prospector has the time to do the necessary work. Section 104 of H R 322 does recognize in principle that diligent development should be rewarded, but the rate of increase in fees means that only a small part of the fee structure goes into the ground. Until a claim is perfected and has value, payments of fees to the government would not be considered a prudent expenditure. The smaller miner will be able to prospect only a very few claims.

2.0 MINE AND RECLAMATION PLANNING (SMCRA-type approach) One element of the legislation that established the Surface Mining Control and Reclamation Act of 1977 was a study of non-coal surface mining. This study was carried out under provisions of Sec. 709 of SMCRA, with the intent to see whether SMCRA approach to mine planning and reclamation would be appropriate to non-coal mining.

This study was carried out under the auspices of the National Academy of Sciences by the Committee on Surface Mining and Reclamation (COSMAR) and published in 1979 as "Surface Mining of Non-Coal Minerals".

The study found that some non-coal mining, especially of bedded type sedimentary deposits, resembled coal mining and could be regulated by the Act. But a general conclusion was:

"... most non-coal mineral mines, despite their obvious diversity, can be considered in two major groups: the numerous, mostly small units mining construction materials in all of the States; and the few gigantic metal mines and other deposits confined to limited regions. With few exceptions neither of the two groups is amenable to the coal mining practices addressed by the Act". Specific areas where there were difficulties in

application of SMCRA were in: 1) Return to original contour; 2) exploration practice, 3) control of waste and 4) revegetation. .

Besides the operational difficulties, there is a fundamental difference in the geochemistry of coal-type and non-coal deposits that makes several of the provisions of H R 322 absurd.

Briefly all metallic deposits are, by the very fact of their existence, strongly enriched in metallic elements relative to an otherwise equivalent part of the earth's crust. The amount of enrichment varies with the type of deposit, its size and its enclosing wall rocks, but the rocks, ground waters in equilibrium with the rocks, surface waters and soils derived from metalliferous rocks are enriched in metals relative to non-mineralized materials.

A soil overlying coal overburden rocks could be expected to have an approximately average trace element chemistry. A natural residual soil overlying a virgin metalliferous deposit would have elevated metal contents--and indeed prospecting by soil and vegetation sampling is a major part of modern prospecting for metal deposits.

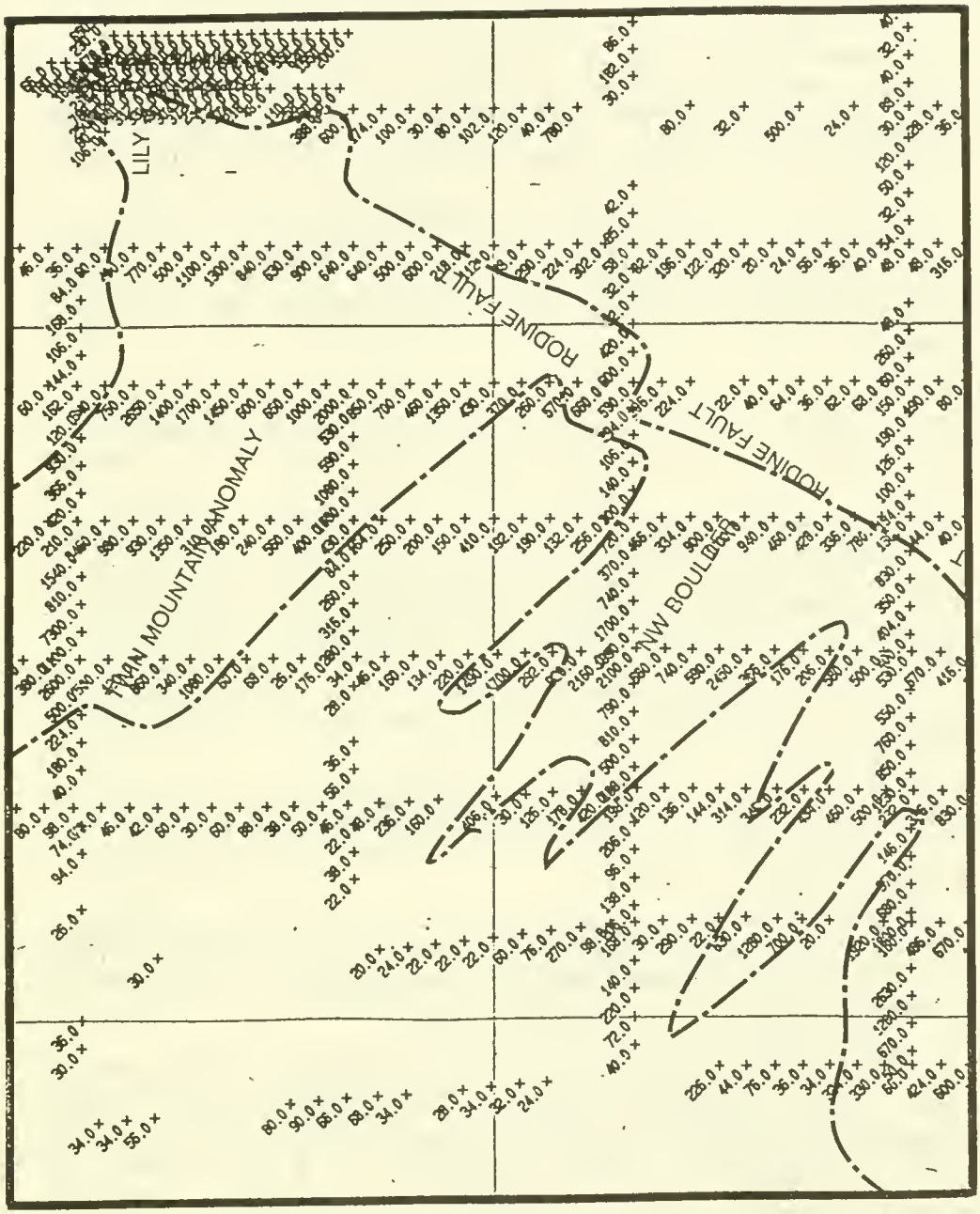
A map given with this testimony should make this clear. The region is in northwest Alaska; it is an upland tundra area with no hardrock mining. Each + on the map shows the location and arsenic concentration in a soil sample collected with a 3-foot long hand-held soil auger. Arsenic was determined analytically because gold, the sought after element in the venture, is accompanied in many cases by arsenic.

In a unmineralized region, the amounts of arsenic expected would most likely fall in the 1-10 ppm range, the common range of all rocks in the earth's crust. In the search program, only soils with more than 20 ppm are plotted. More than 90 percent of the soils sampled in an area 5 miles long contained more than 20 ppm arsenic; many contained more than 320 ppm, and a few contained more than 1/2% arsenic (>5000 ppm).

The most strongly arsenic-enriched areas are also the richest in gold, and further testing can be expected to find hard-rock gold deposits underneath the areas of anomalous concentrations of gold and arsenic.

Section 201 (n) (1)(A, B, C) of H R 322 requires the removal, segregation and protection from contamination of top soils overlying surface mined metal deposits. These top soils will be placed back over the deposits after mining. Are we to protect these soils from further additions of arsenic before we place them back? Are we to remove the arsenic from the soils?

If we now begin to follow the hydrologic studies called for in H



Distribution of arsenic in undisturbed soils, Northwest Alaska. Concentrations in parts per million. Each number represents one soil analysis. Scale: 1 inch = 1000 feet.

Outlined area has more than 320 ppm arsenic

R 322 and begin to test the ground waters for metals, we are almost certain to find strongly metal enriched ground waters within this entire region. Will the existence of these waters--natural, not contaminated--be sufficient to deny a mining plan.

The facts presented and questions asked are not to indicate that metalliferous waters and soils may not be problems, or that such waters may not need treatment if used in some post-mining uses. But they appear to indicate that the drafters of H R 322 have no real knowledge of the natural world--or the mining industry.

3.0 UNSUITABILITY AND RECLAMATION -- RIPARIAN AREAS. As in coal mining, where riparian areas--alluvial valleys--can be declared unsuitable for coal mining, there is at least a strong implication in Section 204.(e) that riparian areas may be placed off limits to mining of locatable minerals by unsuitability standards.

Riparian areas are also, by geologic fact, the habitat for alluvial type placer deposits. In terms of numbers of operations, most Alaska mining operations especially by smaller operators take place in a riparian environment.

It is known that some placer mining had a severe environmental effect on downstream users, but the fact is that placer mining is no longer uncontrolled. Further placer mines are exceptionally easy to reclaim, rarely have the trace metal problems that characterize hard rock operations, and in many cases--without the benefit of the reclamation called for by current State law--furnish adequate to very good wildlife habitat. The effects of placer mining in Alaska are complex and still often poorly understood.

The table shown as the next display may give some idea of the complexity of the system. It uses one biologic group--birds--to examine the effects of mining in a large alluvial valley in southwestern Interior Alaska.

The pre-mine valley was largely spruce-birch forest. The valley was mined almost continuously by small scale methods from 1912 and by small to medium sized bucket line dredges from 1928 until 1990, except for the years from 1965 to 1972.

The data show that avian species characteristic of the mature riparian forest diminished as did some raptors (3d column-decreased); other species increased in mining-disturbed ground (2nd column) The abundance of some other species (column 4) is essentially unchanged. There probably was a small overall decrease in species in the disturbed riparian zone. But in consideration of the valley as a whole, a net increase in total diversity likely occurred, as only a part of the valley was disturbed and some new species favored the disturbed ground.

TABLE 5.1

Probable Status Changes of Birds Breeding in Tuluksak Floodplain or at Floodplain Edge
(from this study and Petersen et al, in preparation)

Foraging Guild/ Sub-Guild	Increased Incl. Temporarily (T)	Decreased	Unchanged or Uncertain
Aquatic fisheater	Mew Gull (T) Arctic Tern (T) B. Kingfisher	R-b Merganser	Comm. Merganser
Aquatic	Pintail G-w. Teal Semip. Plover (T) L. Yellowlegs (T) Spot. Sandpiper W. Tattler Dipper	Harlequin Duck Sol. Sandpiper N. Phalarope Comm. Snipe Lease Sandpiper	Canada Goose Mallard Am. Wigeon Comm. Goldeneye G. Yellowlegs
Aquatic/ Ground-brush	N. Waterthrush R. Blackbird (T)		
Ground-brush/ Browser	Ruffed Grouse	Spruce Grouse	Willow Ptarmigan
Ground-brush	Am. Robin G-c. Thrush Tree Sparrow Sav. Sparrow W-c. Sparrow (T) Fox Sparrow	Varied Thrush Swainson's Thrush D-e. Junco	Hermit Thrush G-c. Sparrow Lincoln's Sparrow
Ground-brush/ Foliage searcher	Comm. Redpoll		
Foliage searcher	Arctic Warbler O-c. Warbler Yellow Warbler Blackpoll Warbler Wils. Warbler	Bor. Chickadee R-c. Kinglet Y-r. Warbler	B-c. Chickadee Bohemian Waxwing
Foliage searcher/ Browser			Pine Grosbeak W-w. Crossbill
Timber-driller		N.3-t. Woodpecker	Downy Woodpecker
Flycatcher	Alder Flycatcher Tree Swallow	O-s. Flycatcher	Say's Phoebe V-g. Swallow Cliff Swallow Bank Swallow
Multiple Forager	Gray Jay		Raven
Raptor	Goshawk Great H. Owl		Marsh Hawk Great Gray Owl Hawk Owl Boreal Owl Am. Kestrel
Raptor (breeding elsewhere, much foraging floodplain	Merlin	Peregrine	Golden Eagle Gyrfalcon

Table from: Environmental Assessment of the Tuluksak River Drainage as related to the Northland Gold Dredging Operation. Hawley, editor: Table 5-1 from Douglas N. Weir, Consultant, Aviemore, Scotland

Examination of other types of animals indicates complex but not necessarily negative effects of mining. All browsers tended to increase in mining-disturbed ground, as did certain fish. Salmon are possibly down, although after 70 years of intense mining, the valley still maintained runs of 4 species of salmon, and salmon spawned in both disturbed and virgin gravel.

Modern placer mining with controls on effluents and reclamation is not an environmental disaster and can be used to enhance wildlife species.

Experience with reclamation in the last few years in Alaska tends to show that SMCRA type procedures are not-appropriate and can be counterproductive. In the flood plain environment, additional ponding that results from mining is perhaps universally beneficial. Introduction of fine-soils during reclamation of flood plain would not be productive, rather armoring by coarse materials should be used to stabilize surface materials on the flood plain and when actually put into the streams can provide resting and rearing habitat for fish.

Each geographic region has appropriate technology that can best be approached from local control of the detailed reclamation standards--not by the SMCRA-type approach called for by H R 322.

In summary, the revenue approaches adopted by H R 322 will not be effective for the federal government. They will almost certainly lead to mine closure and export of exploration. No economic incentive exists in H R 322 to allow prospectors to continue their traditional role in discovery. SMCRA-type procedures and unsuitability called for in H R 322, do not recognize the natural complexity of non-coal mining. Rigid type reclamation structures are also inappropriate and can be expected to worsen rather than enhance species diversification. Meaningful improvements on the Federal Mining Law can be best carried out by amendments in existing law.

MEC

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Executive Director

Statement of

MINERALS EXPLORATION COALITION

on

H.R. 322 "Mineral Exploration and Development Act of 1993"

for the record of the

Subcommittee

on

Energy and Mineral Resources

of the

Natural Resources Committee

United States House of Representatives

Hearing Held March 11, 1993

Mr. Chairman, Members of the Subcommittee:

INTRODUCTION

This statement is submitted by the Minerals Exploration Coalition (MEC) to the House Energy and Mineral Resources Subcommittee with respect to H.R. 322, the Mineral Exploration and Development Act of 1993, which has been introduced by the Honorable Mr. Rahall with the Honorable Mr. Miller, Mr. Vento and Mr. Lehman as co-sponsors. MEC requests that this statement be included in the record of the Subcommittee hearing held in Washington, D.C. on March 11, 1993.

The Minerals Exploration Coalition (MEC) is a professional association comprised of exploration, mining and service companies and individual explorationists located mainly in the western United States. MEC has participated for many years in the public discussions concerning proposed changes to the General Mining Law. Our position papers have been widely circulated, and our statements before Congress are a matter of public record. All of these position papers and statements have been directed toward assuring access to the public lands for the purposes of mineral exploration and development. MEC members represent large and small exploration and mining companies and individuals who conduct mineral exploration on the public lands of the United States. MEC believes that H.R. 322 is detrimental to the best interests of explorationists and would serve to severely restrict, if not eliminate, exploration efforts and subsequent mining on the public lands of this country. The consequent loss of mineral production and good jobs would be detrimental to the country.

GENERAL

H.R. 322 is designed to replace the General Mining Law, not reform it. The General Mining Law has been amended many times since its passage in 1872 in order to up-date and fine tune it as times have changed. MEC supports amendments to the existing statute to fine tune it again in order to make it work better and to help in providing good jobs and raising additional revenues to reduce the deficit. We believe that some of the advocates of H.R. 322 are not interested in improving the mining law and making it work better but in eliminating exploration and mining on the public lands of the United States.

TITLE II PROVISIONS

We are particularly concerned about the provisions of H.R. 322 contained in Title II - Environmental Considerations of Mineral Exploration and Development. Provisions such as those contained in 202 (e) Citizen Suits and 204 Unsuitability Review, together with a number of other provisions including the ability to halt projects at several stages will effectively eliminate any future exploration on the public lands. The public lands have not been thoroughly explored for hardrock minerals, and adequate information for land use planning, as to where mineral deposits are located, is not available. Hardrock mineral deposits are rare natural phenomena that are hidden beneath the earth's surface. They are very small in comparison to the permissive environments in which they can occur, and unlike surface resources such as grazing lands and trees, cannot be readily counted. A mineral exploration industry exists in the U.S. because there are opportunities to discover new deposits, even though new discoveries are becoming more difficult, time consuming and expensive to make. Mineral deposits <u>are</u> where they

are and cannot be moved to more environmentally acceptable locations for mining. Because deposits are so rare and are fixed in their location, mining of them with reasonable environmental controls and restrictions in many cases is, and must remain, the highest and best use of the public lands. Such controls and restrictions are already in place, such as those cited in section 411 (b). These may result in costs so high that the deposits cannot be mined, but the decision whether to mine should be made by the miner after the restrictions are defined, not by government agencies in land use planning done prior to the initiation of mineral activity.

Access to large areas of the public lands which are permissive for the occurrence of hardrock mineral deposits must be available for mineral exploration. The principle of self-initiation, which guarantees the right of access to the public domain for prospecting and claim location, must be preserved if mineral exploration is to be effective. Even though large areas must be available for exploration, only a very small portion of these areas are being or ever will be mined.

Many of the terms and conditions of Title II of H.R. 322 are totally unworkable in a real-world exploration situation. The requirement to include a mining permit application and reclamation plans in a plan of operations for exploration, which may be concerned only with the construction of exploration drill roads, is ludicrous. Mining Permit applications and reclamation plans can be prepared only after extensive geologic, engineering, economic and environmental analyses have been undertaken and finalized by the company, which typically requires many years of work and investment. Therefore, it is both impossible to provide anything of value of this nature to the administrative land agency at the early stage of exploration, and it is illogical as a requirement. The Unsuitability Review process will effectively end exploration on the public lands of the United States because of the time required for it to be accomplished and the ability to exclude large areas from access for exploration when there is little or no information on the mineral values present. Also, the process gives the land manager the right to say "no" to exploration and mining many times. In addition it would be a terrible waste of government resources (time and money) to do unsuitability reviews for mining on lands where a mining operation will never be proposed. In Nevada, only 0.1% of the total land base of the state has been disturbed by mining activity since 1860. Even if an equal amount were disturbed in the future, why should all of the public lands open to location be reviewed for unsuitability for mining? These examples are presented to illustrate the fact that the content of Title II will make exploration, which is the research and development of the mining industry, virtually impossible.

ROYALTY AND ECONOMIC IMPACTS

The royalty provision of H.R. 322 has been the subject of the majority of the discussion on this proposed legislation for very obvious reasons. Reliable and independent economic analyses of the impact of federal gross royalties on production project the death of U.S. hardrock mining. The Davis, Graham & Stubbs-Coopers & Lybrand Study (2-28-92), the John L. Dobra Study (2-24-93) and the Michael K. Evans Study (3-16-93) reveal that a 12.5% gross royalty as proposed in President Clinton's report, "A Vision of Change For America", or of 8% as contained in H.R. 322 would effectively remove all incentive for industry to pursue new mineral development and would render many existing mineral deposits partially or wholly uneconomic. The downstream negative economic impacts on society and federal tax revenues are also addressed in

these studies. The industry can absorb some type of royalty based on net value of the minerals produced, but an ill-defined royalty or tax on gross receipts for a mineral product will bankrupt the industry and result in a net loss of revenue to the Federal Government. If the industry cannot make a profit, there will certainly be no funds available for exploration to find new deposits and thereby create new wealth.

It is alleged that the public gets no financial return from the mining of minerals discovered by private exploration efforts on the public land and subsequently developed, mined and sold, and that no private land owner would allow such things to happen on his land. But private land owners do not have the power to tax and do not have a direct interest in creating new jobs. Data relating to sales and use and income, real estate, severance and net or gross proceeds taxes paid by mining companies demonstrate that there is a substantial financial return to the public from mining operations. To claim that governments do not and should not provide incentives of various kinds to private industry to promote investment and economic development, does not conform to the facts. Without privately funded mineral exploration on the public lands by individuals and companies, the deposits would not be discovered and new wealth would not be created.

CREATING WEALTH

Minerals are one of the few sources of new wealth. As the slogan says, "If It Can't be Grown, It Has to be Mined." When minerals are mined and sold, they are not simply transformed into cash which goes into the pocket of an individual or a company. Minerals are used as one of the bases for our industrial economy which supports our standard of living and provides additional jobs. We cannot maintain a healthy economy without production. Destruction of the domestic minerals industry will make us totally dependent on foreign sources of metals thereby adding significantly to the cost of many of the products we use as well as add to our negative balance of payments. The dollars earned from the sale of the minerals that are mined are used primarily to pay operating expenses, recover capital invested, pay taxes and to fund exploration for and development of new deposits, thus maintaining the cycle of creating new wealth and new well-paying jobs.

MEC RECOMMENDATIONS

MEC would support a number of provisions in the proposed legislation which would serve to answer the criticisms of those who would make wholesale changes in the General Mining Law, but only if the issues discussed above are addressed to industry's satisfaction. MEC would support:

1) an amendment to the current law dealing with changes in the location procedures,
2) a claim rental fee which could be partially offset by diligent development expenditures,
3) an equitable royalty on net value of minerals produced,
4) a provision for income from H.R. 322 to go directly into a mineral land reclamation fund for abandoned hardrock mines to be partially administered by the states.

CONCLUSION

It is popular belief that the principles of access to the public lands for exploration and mining, self-initiation and security of tenure contained in the General Mining Law are outmoded, and that there are large acreages of mining claims which are not being diligently explored and developed and which are being used for non-mining purposes. These beliefs are not true. The General Mining Law is not just a law for the "Old West" of the 1800's. It has been, in fact, most effective in the years since World War II as the demand for metals has increased and the metals demanded have changed. The fact that there have been significant increases in the production of a variety of metals from the public lands since World War II demonstrates that the exploration and mining industry has great flexibility under the General Mining Law to respond to the raw material needs of the United States and the world, and that the public lands have been and are being diligently explored and the mineral deposits found there developed. For example, from 1980 through 1990, U.S. gold production increased almost 10 fold, and the U.S. has gained the position of second largest gold producer in the world behind South Africa. Much of this increased production has come from the public lands, and is a factor in the balance of payments.

MEC has supported and continues to support the concepts of multiple use, access to the public lands, self-initiation and security of tenure on these lands continuing to make them available for diligent exploration efforts. Under the General Mining Law, the exploration and mining industry in the United States continues to be a vital and dynamic part of our economy. We believe that H.R. 322 will substantially restrict, and very likely eliminate, effective hardrock mineral exploration activities on the public lands of the United States. Without mineral exploration and the resulting discoveries, there will be no mining industry on the public lands in this country's future.

We appreciate the opportunity to present this statement to the Subcommittee.

M.C. Newton, III
P.O. Box 1656
Sparks, Nevada
March 10, 1993

The Honorable Richard H. Lehman, Chairman
Energy and Mineral Resources Subcommittee
United States House of Representatives
818 O'Neil House Office Building
Washington, D.C. 20515

Dear Congressman Lehman:

I am an exploration geologist in the mining industry. I am writing to express my concerns about the proposed changes in the mining laws, and I would like to have this letter entered into the record for the March 11th hearings on H.R. 322. I am going to concentrate on royalty, patenting, and the provisions of Title II, which will create an unacceptable business environment necessarily sending American jobs abroad.

The mining law changes proposed in H.R. 322 impact a major industry, which produces the raw materials, such as copper, iron, sand and gravel, limestone, etc. necessary to supply the industrial base of this nation. Perhaps Congress is accustomed to hearing industry lobbyists extol the dangers of particular legislation on their business, and the tendency is to brush aside such admonitions. I am not a professional lobbyist. I am a field geologist with years of experience in mineral exploration, and I know that the mineral industry in this country cannot survive the provisions of Title II and the high gross royalties proposed.

There are two environments which H.R. 322 impacts - the natural environment and the business environment. In real life, these two environments mesh well because of environmentally responsible modern mining practices and the environmental protection laws already in place in America. In the world that would be created by H.R. 322, there would be no balance between these two environments and the business risks and costs engendered would simply mean that small mining companies will go out of business and large companies will explore in other countries and stop investing in America.

Economic impact

In my state of Nevada, 65% of mining properties, most of which are for gold, are on public land, and more than 50% of production is from public land that would be affected by a royalty. The general profit margin now for mining these low-grade ore bodies is 6-12% and is tied to the international price of metal over which neither the industry or the U.S. government has any control. In general, the profit margin for all mining is less than 10%, and if mining companies were insured of even an 8% return they would be happy. The

effect of an 8% gross royalty on existing mine properties, many of which have underlying obligations to claim owners, will be near-term closure of most of them. And there will be few mines opening up in the future. There will be no incentive for future exploration and development, not only for revenue reasons, but because of the restrictions and risk to investment in the provisions of Title II.

As with so many policies aimed at restricting development on public land, the hardest hit will be rural America. The boon to the economy in rural western U.S. communities from gold mining in the last twenty years has been enormous. In Nevada alone, there are 44,000 people employed in primary and secondary jobs related to the mining industry. The average income in the mining industry in Nevada in 1991 was $37,000, compared to an average of $22,000 for the rest of the state. These are high paying jobs producing a profitable commodity for America; they cannot be replaced by government supported jobs-project type employment in reclamation. If this bill becomes law with the provisions of Title II, exploration on public land will cease, and tens of thousands of jobs will be lost. Published estimates of 10,000-30,000 jobs total being lost in the western states are too low. At least 30,000 jobs will eventually be lost in Nevada alone.

Because metal prices are set by the international market, increasing the cost of mining in America will make this country less competitive for mining investment dollars. Mining is truly an international industry because its members operate in geologic provinces on a global scale, which are not demarcated by national boundaries. Western America is blessed with occurrences of gold deposits, and, as Forbes magazine recently published, Asian countries will buy all the gold America can produce. But, if this bill becomes law, mining companies will not be exploring in this country. Unlike the coal industry, for which economics require that the bulk of its market be reasonably close to the source of production, metals can economically be sold anywhere in the world. **The bottom line is that metal mining companies don't have to operate here, and if you create an unfavorable business climate, they won't operate here.** Congress and the administration will be sending American jobs overseas.

Royalty

The days of getting rich from bonanza high-grade gold in veins are over. Modern technology enables the production of gold from very low grade bulk-minable deposits. Gold is a commodity like soy beans; it is worthless lying in the ground. But it can be extracted, refined, and sold to other countries by Americans. The argument that America gets nothing in return for mining is untrue. In addition to the property taxes, sales taxes, income taxes, etc. that all companies pay, mining companies in most states pay "net proceeds" or "severance" taxes, that no other industry has to pay. Foreign-controlled companies commonly reinvest in this country rather than pay the exorbitant 30% federal witholding

tax for repatriation of profits. Since when was it considered bad to encourage foreign investment in this country?

The imposition of a comprehensive royalty by the federal government, applicable to all commodities in all situations, makes it difficult to arrive at a single fair royalty rate. Some commodities, because of the expense of mining and processing involved can economically only handle a royalty rate lower than other commodities. For example, some underground copper mines, requiring expensive deep exploration drilling and expensive mining techniques and processing procedures for a commodity of relatively low unit value can only handle a 3% net royalty on a profit versus risk basis. To allow for some royalty to be available for claim holders from whom mining companies will lease properties, a net federal royalty of 2% net may be all the industry can handle.

When a company enters into an agreement involving royalty with private parties or other companies, the company has already assessed the geology and mineral potential of the property, has a realistic idea of the costs of exploration, development, and mining, and has arrived at an acceptable royalty figure for that particular property. A blind comprehensive royalty which does not allow for variation from property to property and commodity to commodity must necessarily be low, or some commodities will not be profitable.

In addition, H.R. 322 makes no allowance for existing underlying agreements with claim owners, which may already involve a relatively high royalty. With no such grandfather clause or without stipulations that the federal royalty should only apply to claims staked after the enactment date, companies will either have to pay the new royalty on top of their underlying obligations, renegotiate the underlying agreements, or walk away from their mines.

When mines experience reduced profitability due to decreased metal prices or increased costs such as royalty, they have few alternatives other than to reduce exploration expenditures for new reserves, raise cut-off grade, and/or lay off workers. Reducing exploration and raising cut-off grade mean that potential ore will be left in the ground, shortening mine lives and actually causing new mining disturbance elsewhere more frequently than would otherwise be the case.

Patenting

Rare instances where unscrupulous small operators reaped a profit from patented ground used for purposes other than mining have been ridiculously overpublicized, which has contributed to the inappropriately bad image of the industry as a whole. Only 0.3% of patenting cases have been abuses of the system for purposes other than mining. In over 99% of cases, mineral patenting has worked as was intended, to promote the legitimate development of America's mineral resources.

Probably the most important reason for patenting is to obtain "Security of Tenure". This security of title enables a company to obtain bank loans for mining. Banks require assurance of security for their investment, and without the security of "discovery" by legal precedence, stripped away in Title IV, and with the ability under Title II of the administering federal agency to capriciously stop mining or change requirements at any time impacting the economics of a project, patenting becomes even more important for financial assurance.

Patenting merely indicates that the property has been set aside solely for the purposes of mining. It allows companies to develop a mine without some of the restrictions that would apply to casual use, such as not being able to construct permanent buildings on the site and constantly having to seek approval from the government for every detail of operation, for example, for every drill road or pad. And it allows companies control over access to the property, necessary under the strict safety and health regulations under which every industry operates. All laws pertaining to environmental protection and reclamation and royalties can still apply to the patented ground, and after mining is over, reversionary clauses can return the land to the government.

The federal government commonly sells land for purposes such as residential expansion, and there is no move to stop that practice. Mineral patenting has been singled out for repeal because of the cries of abuse and the token patenting fees.

The patenting fees of $2.50-5.00 an acre have been overemphasized, when the BLM has demonstrated that over the last ten years the average cost of proving a valuable mineral deposit and carrying out the other necessary requirements for patenting such as mineral survey, was a minimum of $37,900 per claim (> $1800 per acre). As an example, to say that it would only cost American Barrick Resources $10,000 to patent its Goldstrike Mine in Nevada is to misinform; that company has spent a billion dollars in developing new technology enabling mining, in proving a valuable deposit by drilling and assaying, and in feasibility studies, environmental impact studies, etc. that are part of the application process. No one is saying the patenting fees should not be amended to reflect fair market value, but to scrap mineral patenting altogether because of the above two arguments is misguided.

Title II

Title II contains the most restrictive regulations on mining that have ever been proposed. It reflects a philosophy that mining should be curbed and restricted wherever possible.

Title II will take away the "right to mine". It is the intent of the general mining laws and the Federal Land and Policy Management Act of 1976 that mining shall be allowed on public lands within the guidelines of the Secretary's authority to take any action necessary

to prevent unnecessary or undue degradation of the lands. Under Title II, with the unsuitability review and the unprecedented discretionary powers of the BLM and USFS under duress from special-interest citizens' groups, decisions concerning on what public land mining will be allowed, whether a mine will be permitted at all, and whether to stop operations at any stage of development, will be made solely at the discretion of individual government workers. The guidelines and philosophy under which these workers operate will be dictated by their superiors, and those positions in the Interior Department are presently being filled with members of special-interest groups such as the Wilderness Society and the Sierra Club, whose special interest is removing public land from multiple use. **In the effort to reform an old law, the chance of creating a new system capable of even greater abuse is evident.**

Title II would create an unacceptable business environment

Even basic exploration which may require rudimentary access road excavation will fall under the same severe regulations as mining, requiring a full-blown plan of operations with a 12-month waiting period for water quality monitoring, 4-week publication notice in a newspaper during which time any citizen or agency may file comments and then request a pubilc hearing, which if requested, will be held within no specified time frame. The agency then may either approve or deny the plan, again within no stated time frame. If a plan of operations is approved, complete inspections for compliance are mandatory at least every quarter. The operator must institute an unspecified monitoring and evaluation system and submit quarterly reports on the results of the monitoring and evaluation process. Any person may request an inspection at any time.

For any perceived violations of a plan of operations, any provisions of the Act, or any regulations promulgated pursuant to the Act, any citizen may file complaints and after 60 days commence a civil lawsuit in U.S. district courts against the operator or the Secretary, all potentially at the cost of the operator.

For any decision made by the Secretary concerning any step in a plan of operations or for any perceived violation of the plan of operations or any provision of law, any citizen may request review and a public hearing. **Just to get a simple plan of operations approved could take years.** Title II codifies the ability of individual citizens to delay and thwart mineral development projects until the economics become unviable. This has been the successful practice of environmental activists for decades, and it was for this purpose that the citizen intervention and suit clauses were written into Title II.

Title II would create a completely unfavorable business environment. Regardless of what rental fees and royalties may or may not come out of Congress, if Title II passes, mining companies will immediately begin to move out of America. Companies will not be willing to invest the enormous sums required to explore and develop nor will banks make loans

for mining projects in a setting where regulations can change capriciously and on a case by case and regulator by regulator basis, and any citizen can have them shut down after any stage of investment. Their money will be invested in other countries instead of America.

Unsuitability review

The unsuitability review and land use policy provisions of Title II will enable any area of any citizen's choice to be withdrawn from mineral entry forever, without even having mineral potential assessed. The criteria for withdrawal are extensive and nebulous, including such things as perceived damage to "aesthetic values".

Ostensibly, exploration requiring no road excavation, can still proceed on lands declared to be unsuitable, and if a plan of operations is submitted the unsuitability status will be reviewed. But companies will not invest exploration dollars on these lands with so little assurance of fruition. In reality, once these lands are designated as unsuitable, they will be closed to mineral exploration for ever. And, in the future, they will not have the benefit of being reviewed in light of technological advances in reclamation and environmental protection.

Ore deposits are where they exist, not where we want them to be. Even we specialists in the mineral industry would be hard pressed to designate areas that have no potential for mineral development in the present or in the future. The BLM and USFS cannot make realistic assessments of what lands would be endangered by mining or could not be successfully reclaimed with advanced or future technology. When exploration for mining purposes is arbitrarily restricted, the nation that depends on that mining suffers.

Federal reclamation and environmental protection standards

It was just thirty years ago that this nation became aware of littering, water pollution, and air pollution, and today there are 35 statutes under which mining is regulated, including the Clean Water Act, the Clean Air Act, and the Endangered Species Act. The mining industry does work against the backdrop of the past hundred years of poor environmental protection and reclamation practices. But, in the last decade, the American mining industry has led the world in establishing practices that enable the development of our natural resources in an environmentally responsible manner. This is a record of which we in the industry are proud, and it has been done within the framework of the "archaic" mining laws, because the standards are there in other laws.

The Mining Law of 1872 has been modified over the years by 37 statutes, and a host of federal and state environmental laws have been passed which apply to mining activities under the existing mining laws. Additional federal standards in the mining laws are unnecessary, and the argument that they will prevent future catastrophes requiring tax-

payer clean-up is indefensible. For example, in the case of Summitville, Colorado, existing statutes were stringent enough to have prevented the damage. In this case there appears to have been a combination of operator negligence and ineffective application of the existing laws. Human beings make mistakes. The answer is education, not additional regulation.

Title II calls for comprehensive federal standards applying to every locale and every mining situation. Some of the provisions, such as topsoil storage, are not applicable in some terrains, such as in desert alluvial basins. It is better to allow states to develop their own standards and enforce those regional laws. In the only two states where there is public land with mining activity and inadequate state requirements, there are moves to correct this at the state level. In addition, the proposed federal standards are patterned after coal mining regulations, and allow regulator discretion in reclamation requirements, which could mean a regulator could require back-filling a hardrock open pit, which is economically impossible, as indicated by the National Academy of Sciences 1977 Cosmar report.

The detailed environmental protection and reclamation provisions in Title II are a staggering example of federal overregulation. **Title II represents a gross extension of federal micromanagement, and it will necessarily increase the size of the government bureaucracies and government spending required to implement its provisions.** The argument that increased federal revenues from rental fees and royalty will cover these expenses should be viewed skeptically as the the size of the industry contributing the revenue will be dramatically reduced. Even this year, it will be shown that the expected burgeoning of the federal coffers from the claim rental fees in the Interior Appropriations Act will not materialize. Industry surveys indicate that 50-85% of existing claims will be dropped before August 31. The risk of losing valuable land position is evident, but for a large company to spend $3½ million dollars on claim holding costs in addition to the tens of millions of dollars it spends anually in the normal course of exploration, will not happen. Small miners with more than ten claims cannot afford the rental fees and may be out of business this year.

Conclusion

Recycling is an important source of metal, and it will become increasingly important in the future. But it cannot supply all the raw metal used in industry. As an example, 51% of the steel presently used in manufacturing an automobile is recycled, and this includes reusing shavings and cuttings from the automobile manufacturing itself. The other 49% has to come from newly mined metal. Until we can mine asteroids, centuries away, new metal must come from the earth, and this necessarily means digging holes and extracting rock.

H.R. 322 would jeopardize the very existence of the industry that provides copper, zinc, iron, chromium, nickel, and the multitude of other elements and minerals essential to maintain the manufacturing prowess and high standard of living of this nation. The U.S.

Bureau of Mines projects that 1993 U.S. consumption of copper will exceed 2.2 million tons and that U.S. mine production of copper will approach 1.8 million tons. We should be striving to maintain our virtual self-sufficiency in copper rather than implementing policies that will cause increased dependence on foreign sources.

Title II is the legacy of a time when congressmen could indulge in sponsoring legislation to increase the size of government bureaucracies such as the BLM and increase government spending and overregulation. But with the ever expanding budget deficit, we all know this has to cease.

This really is a situation where cutting off the hand to save the arm could result in the death of the body. In passing unduely stringent provisions to protect the natural environment and to raise federal revenues, the business environment for mining will become so unfavorable that future mineral exploration and development on public land in this country will end. **To me personally, it will mean losing my job and my family's financial security.** The mainstream of Americans are interested in jobs and the economy as well as protecting the environment. The complex issue of coupled resource development and environmental protection truely requires objective and rational treatment.

H.R. 322 is not the proper vehicle for this rational treatment. Title II is so intricately laced with wording to thwart business activity, it cannot be fixed by simply making technical amendments or even removing whole sections. Another bill with a less restrictive framework is necessary.

Sincerely yours,

M C Newton, III

Maury Claiborne Newton, III, PhD
Consulting Geologist

cc: Congressman Philip R. Sharp
Congressman Austin J. Murphy
Congressman Edward J. Markey
Congressman Nick J. Rahall, II
Congressman Larry LaRocco
Congressman Nathan Deal
Congressman Peter A. DeFazio
Congressman Tom Barlow
Congressman Barbara F. Vucanovich
Congressman Craig Thomas
Congressman John T. Doolittle
Congressman Wayne Allard
Congressman Scott McInnis
Congressman Richard W. Pombo

BARRICK

GOLDSTRIKE MINES INC.

P.O. Box 29 • Elko, Nevada 89803 • Telephone (702) 738-8043

March 12, 1993

Honorable Bruce Babbitt, Secretary
United States Department of the Interior
Washington, D.C.

Dear Mr. Secretary:

Re: House and Senate Testimony on Mining Law Reform

Let me introduce myself. My name is Robert M. Smith and I am President of Barrick Goldstrike Mines Inc. ("Barrick"). I have reviewed the written testimony prepared and submitted by you on March 11, 1993 to the Subcommittee on Energy and Mineral Resources of the House as well as the written testimony prepared and submitted by Mr. Phil Hocker on behalf of the Mineral Policy Center. I understand that you (and perhaps Mr. Hocker) also intend to testify before the Mineral Resources Development and Production Subcommittee of the Senate next Tuesday. Both written testimonies contain, in my judgment, a number of errors that should be called to your attention before you testify on Tuesday. I realize that the facts necessary to support your testimony had to be gathered in a hurry. Nevertheless, because so much of your testimony and Mr. Hocker's testimony focused on Barrick and its patent applications, I feel compelled to correct and supplement the information you have available to you. Most of what I will say in the paragraphs that follow can be confirmed directly by contact with the Bureau of Land Management ("BLM") in Nevada who worked on Barrick's patent applications.

At the outset I would like to introduce you to Barrick. In early 1987, Barrick purchased the Goldstrike Mine in Central Nevada. For approximately ten years prior to our purchase, the Goldstrike Mine had been a marginal producer, yielding little gold and creating few jobs. Since that time however, Barrick has invested over one billion dollars in the mine. It directly employs some 1,350 people and indirectly employs another 5,000 people in central Nevada.

With respect to the patenting process, the data presented to you for use in your testimony in not complete. First, Barrick was not even in a position to consider patenting until it had spent nearly $500 million on the properties. This money was necessary to prove up the full mineral potential of the property and to refine the information necessary to demonstrate our ability to commercially process the ore at Goldstrike that Barrick felt was necessary to support its patents. This investment and the generation of data took nearly four years. In 1991, having made a huge investment in the mine, Barrick felt that it was appropriate to obtain the security of title offered by the patenting process of the General Mining Law. Following that decision, in February 1991 Barrick engaged an engineering and surveying company to review all of its claims, identify survey monuments and claim boundaries and otherwise perform the types of pre-application homework recommended by the BLM in its patenting manuals and materials. This process involved several surveyors and engineers full time over an approximately three-month period.

After completing our "homework", in June of 1991 Barrick filed an application with the BLM for mineral survey, the first formal step in the patenting process. The BLM approved the request and appointed a certified Mineral Surveyor to Barrick's project. The surveyor and his field crew spent nearly five months preparing the mineral surveys. The BLM Cadastral Survey Group then spent the next four months reviewing the Mineral Surveys before the surveys were approved. While the mineral survey review process was ongoing, Barrick began preparing mineral patent applications. As recommended by the BLM patenting manual, Barrick held a pre-application meeting with BLM employees in order to learn how to prepare the best possible applications. Barrick spent over two months preparing draft applications while the mineral surveys were being reviewed.

The first mineral survey was approved on February 20, 1992, almost nine months after Barrick had formally started the patenting process. Shortly after the approval of the first survey, Barrick submitted its first patent application. As each subsequent mineral survey was approved over the next seven weeks, Barrick submitted an additional patent application. At this point, the patent application process becomes entirely internal to the BLM. The length of time for this part of the process, called the "in-house adjudication", depends on several factors. Probably the most significant factor is how many patent applications were waiting in line ahead of Barrick's application because the BLM processes patent applications in the order in which they are filed. The other critical factor in the speed of adjudication is the quality of the application. Barrick understood from its pre-application meeting with BLM the sensitivity of the adjudicators to completeness and precision. Because of the sensitivity, Barrick was able to prepare applications that required only minor amendments during the adjudication process. In each case where a revision was required, Barrick responded promptly.

Although we do not have hard data, we understand that errors and omissions in preparation of applications can lengthen the adjudication process by several months.

On September 9, 1992, the adjudication process was completed. This portion of the process took approximately six months. It could have been longer or shorter. We understand that Barrick's applications were processed in the ordinary course of business and the applications required far less amendment or correction than is typical.

Following issuance of the first half mineral certificates, Barrick became aware of the new mineral examination "pilot program" that BLM had been working on for over a year. The pilot project would permit BLM to utilize certain qualified mineral examiners that are not directly employed by BLM to assist in the mineral examination. We understand that this is essentially the same process employed for mineral examination by the National Park Service and the National Forest Service for years. By letter dated October 16, 1992, BLM invited all patent applicants in Nevada and California to participate in the pilot project. Barrick was the first to respond. While the guidelines for the process were being developed, Barrick undertook a search for the most qualified private mineral examiners available that would assure acceptability by BLM and the success of the pilot program. Barrick contacted Mr. Richard Harty, United States Forest Service Certified Mineral Examiner No. 002, and got his agreement to act as the third party mineral examiner under the BLM program if the BLM program was formally authorized. Not only is Mr. Harty a Certified Mineral Examiner and Review Mineral Examiner for the Forest Service, he is also a member of the Forest Service Certification Board for Mineral Examiners and was the lead mineral instructor in the Phoenix Training Center of the BLM for several years. In anticipation of the pilot program, Barrick's staff worked diligently over the next two months to organize the masses of geologic, engineering and other data that would be necessary for the mineral examination. In December, the pilot program was given formal approval and Barrick immediately executed a Memorandum of Understanding involving the BLM, Barrick and the third party mineral examiner.

Mr. Harty worked closely with the BLM Certified Mineral Examiner and Certified Mineral Review Examiner appointed to the project to assure the highest level of accuracy and completeness in the mineral report. Although there could be no serious contention that the claims at Goldstrike do not meet the "discovery" test, BLM – not Mr. Harty – made all final evaluations and determinations. If you will review the mineral report you will conclude that it stands second to none. The mineral report was formally approved by the BLM on February 12, 1993, nearly two years, thousands of man-hours and three quarters of a million dollars after Barrick started the process.

In summary, the speed with which Barrick has gone through the process has been partly the result of hard work, diligence and careful compliance with BLM guidelines and partly the fact that there were few applications ahead of Barrick's in the adjudication process. Our view, which corresponds with the testimony you delivered to the House Committee on Thursday, is that we have a legal right to issuance of our patents if we have met the applicable legal requirements. We are further of the view that we have clearly met those requirements.

Mr. Secretary, I hope that this information helps to set the record straight and will be useful to you in your future testimony. I would be happy to provide more detailed information if you would like.

Yours truly,

Robert M. Smith
President.

ASSOCIATION OF AMERICAN STATE GEOLOGISTS

AASG

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June 23, 1993

The Honorable George Miller
House Natural Resources Committee
1324 Longworth House Office Building
Washington, DC 20515

Dear Representative Miller:

On behalf of the Association of American State Geologists (AASG), I am pleased to provide you with the attached copy of a resolution relating to mining law reform legislation. This resolution was adopted at the 85th Annual Meeting of the AASG held in Coeur d'Alene, Idaho on June 6-9, 1993.

Sincerely,

Morris W. Leighton

Morris W. Leighton
President, AASG

MWL:dms

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TO THE UNITED STATES CONGRESS

WHEREAS, the individual states represent great diversity in their natural resources; and,

WHEREAS, the states have in place various environmental protection programs;

NOW THEREFORE, BE IT RESOLVED, that the individual states should receive primacy under current mining law reform before Congress. Further, be it resolved that discretionary powers of the Secretary be subject to oversight through a AASG-Federal Advisory Committee. And, be it further resolved that the state's share of royalties, generated as a result of mining law reform not be subject to Federal overhead deductions.

Morris W. Leighton

Morris W. Leighton, President

BRUSHWELLMAN
ENGINEERED MATERIALS

Brush Wellman Inc.
17876 St. Clair Avenue
Cleveland, Ohio 44110
216-486-4200

Hugh D. Hanes
Vice President, Environmental
and Government Affairs

March 18, 1993

The Honorable Richard H. Lehman
Chairman
Subcommittee on Energy and Mineral Resources
Committee on Natural Resources
United States House of Representatives
Washington, DC 20515

Dear Congressman Lehman:

Re: HR 322 -- Mineral Exploration and Development Act of 1933

I listened with great interest to Secretary of the Interior Babbitt's testimony at the hearing on the subject Bill on March 11, 1993, especially his comments regarding the patenting process. Throughout the Mining Law debate, including the Secretary's testimony, the patenting process has been depicted as a "land-grab" by industry to convert public lands to private ownership at little expense. Nothing could be further from the truth as the Brush Wellman experience demonstrates. Please make this letter, including the attached testimony given at the Senate hearings in December, 1991, a part of the hearing record.

Brush Wellman is a publicly-held, domestic corporation which is a producer of beryllium, its alloys, and compounds. We are the only fully-integrated producer of these strategic and critical alloys outside the former Soviet Union. With our holdings in Utah, we are essentially independent of foreign raw materials to support this production.

Currently, we have on file with the BLM in Salt Lake City 8 patent applications which cover 103 lode claims, 85 surveyed mill sites, and 87 aliquot part mill sites. These claims and mill sites include 2,027.5 total acres of public land located in the western Utah desert more than 30 miles from the nearest permanent inhabitant.

Secretary Babbitt chose American Barrick as an example to advocate against the so-called "fast track" patenting process even though he admitted in his testimony that nothing improper was done. However, we believe that the Brush Wellman experience more typically reflects how the Mining Law was intended to work in the discovery, development, commercialization, and securing of tenure on claims, as well as the time schedule of the patenting process.

In the early 1960's Dr. Norman Williams and his geology class from The University of Utah discovered the presence of low-grade beryllium ore while on a field trip. This discovery caused a flurry of prospecting and staking of claims by local prospectors over a 300 square mile area of the west-central Utah Desert.

As described in the attached Senate testimony, beryllium is located in thin veins or lodes extending from the surface to over 600 feet deep and is covered by rhyolite, a hard granitic rock layer. To locate these minerals, hardrock drills are used and assays taken of the drill cuttings. Since Brush Wellman started their exploration and development program, we have drilled and assayed over 1.5 million feet at today's cost of over $8.00/ft. of drill hole.

In parallel with the exploration program, it was necessary to develop a new technique to extract beryllium from the low-grade Utah ores. Once sufficient reserves were discovered, Brush Wellman made the capital commitment, and, based on the new extraction technology, started operating in 1969. In the intervening years, we exceeded the $100/claim minimum requirements by opening new pits as needed, and adding to our proven and probable reserves.

When the debate over the Mining Law was renewed in 1988, our focus changed to the patenting process. The next two years were spent in perfecting our claims by better defining our proven and probable reserves, and in 1991 we filed our first applications for mineral survey. Once the legal work was completed, nearly a year was spent by a BLM-appointed, Brush Wellman financed (as required by law) cadastral (land) surveyor. Having satisfied all the requirements under the law we were allowed by BLM to file our patent applications in the period from June to October, 1992. Just last week the first public notification of our patent applications was given and we are told the applications are currently in the adjudication process. Once this is completed, the first-half final certificates should be issued, if not stopped by executive fiat or a change in the law.

Mr. Chairman, we've been on the "fast track" for nearly 3 years after spending over 20 years in exploring and developing our claims. Of course we tried to expedite the process since the proposed changes in the law threatened to eliminate our right to secure tenure. To do otherwise would be irresponsible to our employees, our shareholders, and the public. To date, we have spent over $10,000,000 to develop and patent these claims which is equivalent to nearly $50,000/claim for the mineral estate contained in our patent applications. In terms of the surface estate, we've spent nearly $2,500/acre for the lode and mill site claims. To deny us and others in similar circumstances the right to secure tenure on these lands after such a long, expensive procedure would be a serious taking of rights under existing law.

We have argued long and hard in favor of patenting and feel strongly that this principle should be retained in any revision of the General Mining Law. At a minimum, if the law with respect to patenting is changed, existing applicants should be "grandfathered" at the

point of Application for Mineral Survey since that is the point at which the company loses control and the process is turned over to the Government.

As stated in previous testimony, we stand ready to work with the Congress to assure fair and equitable treatment for all parties involved.

Sincerely,

Hugh D. Hanes

HDH/clh

Enclosure

TESTIMONY OF HUGH D. HANES
VICE PRESIDENT FOR ENVIRONMENTAL AND LEGISLATIVE AFFAIRS
BRUSH WELLMAN, INC.

Before the Subcommittee on Mineral Resource Development and Production of the Senate Energy and Natural Resources Committee
December 18, 1991

Mr. Chairman, I am Hugh Hanes, Vice President of Environmental and Legislative Affairs for Brush Wellman, Inc. Until recently, I was General Manager of the Beryllium and Mining Division and had responsibility for our mining and extraction operation located near Delta, Utah. Brush Wellman is the Free World's only integrated supplier of the metal beryllium, beryllium copper alloys, and beryllium oxide ceramics. Brush Wellman's mine in Utah is the only operating beryllium mine in the world.

The highly unique properties of these beryllium materials make them critical to some of the country's most sophisticated defense and aerospace systems. Every strategic missile system in the U.S. Defense arsenal contains beryllium components which are critical to its performance. For example, the land based Minute Man III & MX, the sea based Trident and the airborne S.A.C. systems all depend on beryllium for guidance and nuclear weapons components. Many of the sophisticated smart weapons employed in the recent action in the Persian Gulf (Desert Storm) used beryllium in critical structural, optical, and electronic applications. The "Smart Bombs" were guided to their targets by optical and laser systems which depend on beryllium components for their performance. Beryliium copper alloys are used commercially in the most advanced auto electronics, computers, integrated circuits, telecommunication, and oil exploration systems. Because of its importance in Defense Systems and in critical civilian applications, beryllium is one of the materials stockpiled in the National Defense Strategic Materials Stockpile.

Prior to 1969, the domestic beryllium industry was totally dependent on beryl ore from foreign countries such as Brazil, Zimbabwe, People's Republic of China, and India. In the middle 60's, Brush developed the technology to extract beryllium from low-grade Utah ores and, as a result, we made one of those "bet your company" decisions and built an extraction plant in Delta, Utah which integrated us backward into the mining business. This move was of great strategic importance to both Brush Wellman and the Country, since it meant we were no longer dependent on foreign supply of ore for this critical material from politically unstable countries.

First, let me quantify the magnitude of the technical problem which we face in mining Utah beryllium ore. This ore, which contains only 1/4 of 1% beryllium, lies in thin layers extending from near the surface of the earth, down to over 600 feet in depth.

At ground level, the ore bodies are covered by rhyolite, a hard, granite-like volcanic rock, which must be removed by drilling and blasting. For every 4 pounds of beryllium extracted, we haul 1-ton of ore over 45 miles from the mine to the mill. To access the ore, we remove 20 tons of overburden for every ton of ore mined.

Opponents of the Mining Law portray us as randomly disturbing the landscape in search of minerals. Actually, our mining crews operate with surgical precision. In order to locate our current reserves, we have done over 1.4-million feet of exploratory drilling. This exploration program, conducted over more than 25 years, if allowed to be completed, will allow us to potentially reduce the nearly 1,000 claims which we have staked to focus on less than 100 patented claims. To date, we have spent over $8.0 million to locate these claims and have committed another $2.0 million to complete the patenting process. This is hardly the $2.50/acre land giveaway portrayed by opponents of the current mining law.

Public concerns are often expressed about the impact of mining on the environment. We have on file with the Utah Division of Oil, Gas and Mining a 30-year mine reclamation plan which includes appropriate financial assurances. This reclamation plan was filed over a decade ago and is periodically reviewed and updated. We believe that this authority should properly reside with the state as it currently does.

Although opponents of the Mining Law portray it as a giveaway to industry, the public benefits in many ways. First, we have consistently provided quality employment, even during the mining depression of the early 1980's, resulting in tax revenues. The company itself, along with the many suppliers of goods and services which we support, also provide substantial tax revenues at the federal, state and local levels. The benefit to the public should be obvious to the most casual observer.

The current Mining Law allows the establishment of tenure through patenting where commercial quantities of minerals are discovered. This is a feature of the law that must remain unchanged because it fixes one of the major variables in mining, ore supply, and allows for long-term planning. While threatened changes in the law have caused us a certain sense of urgency in proceeding to patent our unpatented claims, the long, complex, and expensive process precludes a "head long rush" to patent. When our patents are issued, we will have spent well over $50,000/claim; again, hardly a giveaway program.

Mr. Chairman, I have attempted to describe in this short presentation a mining and extraction process which is very cost sensitive and an exploration process which is precise, but costly, as well. While we, like most profitable industries, can absorb minor increases in cost, significant changes in the cost picture

could force us to leave lower grades of ore in the ground, thus decreasing our reserves. Ultimately, we could be forced to turn once more to foreign beryl ore or to take our mining and extraction process off-shore, closer to the supply of beryl ore.

We, like our responsible colleagues in the mining industry, abhor the illegal practices of a few unscrupulous operators, which have been highlighted by opponents of the mining law. However, these cases are few and far between and can be handled under existing law. In order for the minerals industry to stay strong, the basic right to patent our raw material supply must remain. On the other hand, Brush Wellman could support the principles of either reversionary rights or payment of fair market value for these patents.

Mr. Chairman, Brush Wellman is proud of the role that we have played in supplying the unique material beryllium for the strategic defense systems of our country. But going beyond the defense issue, beryllium materials are one of the enabling features that make possible some of the sophisticated technological dreams of the future.

Thank you for the opportunity to appear here today. I would like to submit for the record a copy of a letter we submitted to this subcommittee last year. This letter is a critique of S.1126 but many of our concerns apply to S.433.

GOLDEN SUNLIGHT MINES, INC.

March 15, 1993
Via Federal Express

The Honorable Richard H. Lehman, Chairman
Energy and Mineral Resources Subcommittee
House Natural Resources Committee
1319 Longworth House Office Building
Washington, D.C. 20510

Testimony to be Entered Re: H.R. 322

Dear Congressman Lehman:

I respectfully request that this letter and the enclosed information refuting portions of Mr. Richard Parks testimony before the Committee on March 11, 1993, be placed in the Committee record of that hearing.

The purpose of the enclosure is to correct misrepresentations and half truths that have cast wrong impressions in the minds of the public and the members of your Committee. These methods are used consistently by opponents of mining and just as consistently we put the record straight.

It is becoming an increasingly simple matter to differentiate the radical preservationists - who would shut down all mining; from the concerned environmentalists - who seek a balanced and productive development of our mineral resources.

We have pledged our efforts to work with the latter group.

Sincerely,

C. E. McFarland
President

CEM:rld

Enclosure

cc: Members of the House Energy & Commerce Committee
Members of the U.S. Senate Committee on Energy and Natural Resources

\pdus\1235

March 12, 1993

Golden Sunlight Mines, Inc. Responses to House Natural Resource Committee Testimony of Richard Parks/NPRC

Comment: Golden Sunlight Mine near Whitehall, Montana, has been open since 1982.

Response: Golden Sunlight Mines, Inc. (GSM) began operation in February 1983.

Comment: By 1983 a construction error had resulted in a spill of cyanide contaminated tailing water in excess of 9 million gallons. This spill infiltrated nearby domestic water wells. This spill is not an example of "ancient history", but rather a modern mine operation.

Response: There was a loss of tailing solution resulting from a construction error in 1983 that affected two nearby domestic water wells. The solution was detected in groundwater monitoring wells installed by Golden Sunlight prior to the tailing dam construction. The problem was promptly reported to appropriate government agencies and local residents.

An alternative water supply was provided for the two residents whose wells were involved, and quick action was taken by Golden Sunlight to stop the leak and return the contaminated solution to the tailing pond by means of a network of pumpback wells. At no time did the contaminant levels in the residents' wells reach or exceed safe drinking water standards. Since that time, contaminant levels have decreased to or below detection limits.

With regard to Mr. Parks' statement about ancient history vs. a modern mining operation, this is a good example of how safeguards used by modern mining can detect a problem so it can be promptly corrected.

Comment: Now, this same mine is proposing a major expansion, which includes a reclamation plan that is unlikely to succeed. Dr. Eugene Farmer, a west-wide reclamation specialist for the U.S. Forest Service in a letter, dated June 28, 1990 to the Chief of the Montana Hard Rock Bureau provides compelling evidence that Golden Sunlight's proposed reclamation plan would fail. Despite that advice, the Bureau of Land Management (BLM) and Montana Dept. of State Lands, the permitting agencies granted the expansion permit.

Response: Golden Sunlight is not proposing an expansion but is nearly three years into the expansion. Golden Sunlight's reclamation plan is one of, if not the most, progressive and comprehensive reclamation plans in the U.S. with bonding to match. Thirty-one specific stipulations were added to the permit in response to comments from people like Eugene Farmer, to insure that reclamation would not fail.

Eugene Farmer's comments were based on a quick drive-through tour several years earlier and reading the reclamation plan before the 31 stipulations were added. The focus of his problem with the reclamation plan was on 2:1 versus 3:1 slopes for waste dump reclamation. Mr. Farmer believed that 2:1 slopes were too steep to operate equipment on and topsoil erosion would be difficult to control. However, Golden Sunlight's commitment was to evaluate a range of slopes for reclamation varying from 2:1 to 3:1 through establishing several large-scale test sites, while providing bonding for ultimate reclamation of waste dumps at 3:1 slopes.

Mr. Parks seems to be suggesting that the Bureau of Land Management (BLM) and Montana Department of State Lands (DSL) should not have issued a permit to the mine based on Eugene Farmer's comments; and that his drive-through tour and reading of the reclamation plan represents a greater understanding of Golden Sunlight's reclamation challenges than the 2½ years and thousands of man-hours spent by the technical staffs of the Bureau of Land Management, Department of State Lands, Golden Sunlight Mines, and independent reclamation consultants to arrive at a reclamation plan that will be successful.

Mr. Farmer would probably find the results of the last two years of extensive research and development at Golden Sunlight encouraging, and may be surprised at the knowledge gained in understanding the reclamation and control of acid production on large, sulfide waste dumps as a result of this research.

Comment: The bond proposed is expected to guarantee perpetual treatment of acid mine discharge from the open pit, but it does not even address the acid producing waste rock piles.

Response: The bonding for perpetual treatment of acidic water from the open pit is not proposed but is in place.

There is no acid drainage expected from the waste dumps but Golden Sunlight has committed to collection and treatment of any discharge from the waste dumps, if required. In addition, monitor wells have been established around the perimeter of the open pit and waste dumps to monitor any changes in groundwater quality.

Comment: I believe that Golden Sunlight is a superfund site in the making.

Response: Mr. Parks may be attempting to equate Golden Sunlight Mine to the Butte Superfund Site. This is an unjustifiable comparison of two totally different sites that differ vastly geologically and hydrologically. Golden Sunlight will be monitored and reclaimed with modern technology. The Butte site resulted from 100 years of mining when there were no controls to protect the surrounding environment, and no reclamation was required.

As owner of a fly fishing shop in Gardiner, Montana, it is doubtful that Mr. Parks has the technical understanding to make such an inflammatory statement.

Comment: Golden Sunlight Mine is an example of why we need the public participation and citizen enforcement sections of HR 322. The expansion plan was reviewed by an EA rather than an EIS even though it involved a whole new tails pond and six-fold increase in the size of the open pit.

Response: Golden Sunlight was originally permitted in 1982 by an EIS, and subsequent changes and expansions were permitted by an EA. Since the latest expansion in question was more extensive than previous expansions, an extensive mitigated EA was used, not just an EA. The expansion increased the open pit by a factor of two not an exaggerated "six-fold" as stated by Mr. Parks.

Comment: The EA process minimized public input. The decision to grant the expansion permit has been appealed to the Interior Board of Land Appeals (IBLA) which has not acted on the appeal for nearly 3 years. Because of the IBLA's failure to act within a reasonable amount of time, citizen's groups were forced to challenge this dangerously inadequate expansion proposal in state court. It seems probable that the court case will be decided in the citizens' favor. As a consequence, the industry has sponsored state legislation to further restrict public access to the process and make it financially impossible for citizens to bring suit to enforce our constitution and laws.

Response: The mitigated EA process did not minimize public input. Golden Sunlight voluntarily agreed to two public hearings and public comment periods during the permitting process.

The IBLA has not yet ruled on the appeal, and the lawsuit in state court has not been decided but there is no reason to believe the case will be determined one way or another at this point. Mr. Parks' statement that it looks probable the case will be decided in the "citizens" favor, seems to be overlooking the point that in any event, we are all U.S. citizens.

The fact of the matter is that no amount of public input would satisfy the preservationist groups involved in the appeal and lawsuit. Their objective seems to be to stop all mining activities, not to foster a balanced approach to resource development.

The state legislation referred to does not restrict public input, but simply establishes realistic timeframes after a permit is issued to file a challenge, as well as clarifying when an EA, mitigated EA, or EIS should be used in the permitting process. Industries, state regulators, and responsible environmentalists all need this clarified.

Comment: It is important for you to know that Golden Sunlight Mine is a unit of Placer Dome, a Canadian mining co.

Response: Golden Sunlight Mine is a unit of Placer Dome U.S. Inc., a California corporation and an American mining company. Placer Dome U.S. Inc. is a wholly-owned unit of Placer Dome Inc., a Vancouver-based world-wide mining company. Placer Dome U.S. and its predecessor companies have been established in the United States since 1929. All but a few of the 600 Placer Dome U.S. Inc. employees are U.S. citizens.

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OFFICERS

President
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V.P. of Administration
Julie Mann Rohn

Secretary and
Chief Financial Officer
Dorothy E. Mann

MAR 12 1993

March 4, 1993

To: Members of House Natural Resources Committee

Re: Nick Joe Rahall's anti-mining bill HR 322

Position: Opposed

Request: Enter in Official Hearing Records

This bill does the exact opposite of what an ailing economy needs. It restricts growth and production and eliminates jobs. America needs incentives. We don't need HR 322.

Sincerely,

Julie Mann

Julie Mann
President

JM/cc

A small mining company meeting society's needs

David B. Whitcomb
6320 Jerseydale Rd.
Mariposa, CA 95338

The Honorable Rick Lehman
U.S. House of Representatives
Washington, D.C. 20515

Dear Representative Lehman,

The General Mining Law of 1872 was enacted during Ulysses S. Grant's administration as a means of settling the West, encouraging hardrock mining over all other public land uses. More than one hundred years later, this antiquated law continues to allow unchecked mineral development for private profit at the cost of massive damage to our environment.

H.R.322, the Mining Law Reform Act, would take steps to reform our mining laws by requiring that other values, such as wildlife habitat and recreational opportunities, be considered before a mine is automatically permitted in sensitive areas. This legislation would prohibit mining in certain ecologically sensitive areas and would contain strong standards for ecological reclamation after mines are closed. The bill also establishes a system whereby a portion of the government's royalties from mineral production would go toward a fund to clean up abandoned mine sites.

Companion legislation to H.R.322 has been introduced in the Senate as S.257. However, another bill being touted as mining reform, S.775, is a sham bill, supported by the mining industry, which would do almost nothing to change the industry's ongoing rip-off of American taxpayers and our environment.

I strongly urge you to co-sponsor H.R.322 and work to ensure its passage. Should S.775 pass the Senate, I also urge you to utilize all of your influence to ensure that the final mining bill sent to the President contains the strong and effective provisions of H.R.322.

Most sincerely,

David B. Whitcomb

David B. Whitcomb

Susanne Whitcomb
6320 Jerseydale Rd.
Mariposa, CA 95338

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Most sincerely,

Susanne Whitcomb

Susanne Whitcomb

Carbondale, CO 81623
Telephone: (303) 963-2344
Fax: (303) 963-1867

March 2, 1993

Mr. Richard M. Lehman
Chairman
Subcommittee on Energy and Natural Resources
818 OHOB
US House of Representatives
Washington, D.C. 20515

Reference: Testimony for the 3/11/93 Hearing Regarding H.R. 322.

Dear Mr. Lehman:

Thank you for the opportunity to provide the following comments on the Mineral Exploration and Development Act of 1993. I will attempt to express my views on the Act on a section by section basis using the January 5, 1993, draft of H.R. 322.

Before I get to specifics, the following will provide you with some information about my background. My education includes a B.S. in Mining Engineering and a Master's in Business Administration, both from the University of Washington i Seattle. I have 18 years experience in the development and financing of new mining operations with work at AMAX, Union Pacific Corporation, Smith Barney, Colorado Yule Marble Company, and my own mining finance consulting company. I have been involved in the evaluation or development of close to a hundred hard rock or coal properties, some of which have received awards for environmental excellence. I currently work as a consultant to companies and individuals helping them find investment money for their mineral projects world wide. I deal on a daily basis with all of the junior and major mining companies' exploration departments to bring them hopefully attractive mineral properties. I hold a Professional Engineering License in the State of Colorado. The basic theme of my work has been to develop mineral properties in an environmentally sound manner, no matter what the regulations may require. This theme is a result of a love for the wilderness of the Western US, combined with the knowledge that a strong and growing mineral industry is not only necessary, but critical for the maintenance of and improvement in our quality of life. I continue to believe that new mines can be opened in the Western US without significant environmental impacts.

While my comments below may reflect the mining industry's position on many issues, I am an independent mining finance consultant without allegiance to any particular faction. I hope my comments reflect an underlying desire to judge the new legislation based on a concern for the economic welfare of our country as well as for the global environment.

Section 104: CLAIM MAINTENANCE REQUIREMENTS

(a) IN GENERAL.-- I think thia is well conceived and will work effectively to accomplish the goal of preventing the holding of claims without any intention on the part of the owner to develop a mine on the property. However, I don't believe it will raise much money for the treasury. My business puts me in contact with a broad range of current claim holders, from individuals who hold just a few claims to the giants of the industry who hold thousands of claims. Everyone I talked to about this issue has indicated they will drop from between 50 and 95 percent of their unpatented claims. So I believe an estimated revenue which might be generated is probably too high.

I like the concept of the rental fee because it will keep surface disturbance to a minimum and the sliding scale will encourage a "develop it or drop it" mode of operation. I believe that the increases should come at ten year intervals instead of five year intervals, just based on my experiences concerning the time it takes to develop a mining operation. I suggest that if a mine is put into production, then is placed on standby, the claim rental fee should drop to the $5 level. The price fluctuations of mineral commodities sometimes require companies to place mines on standby for long and multiple periods of time. It isn't quite fair to expect a mining company to pay the fee during tough times after they have invested so much in the property. If the company has to pay the fee as well as pay a maintenance crew to keep the mine available, it may choose to let the property go completely. I think the $2.50 minimum rental fee is unnecessary and will probably be more trouble to administer than it is worth.

Section 201: SURFACE MANAGEMENT

(a) IN GENERAL. -- I don't see much in these requirements for a plan of operation that isn't already required by either County Land Use Change processes or State Mine Land Reclamation requirements. However, there are some counties and some states which do not require the submittal of a plan of operation. My concern is that there should be one process which controls. NEPA, most states, many counties, and now the Federal Government, would require a process through which a mining company must work in order to develop a mine. It may seem reasonable to provide the Secretary with a plan of operations which is already required by other agencies, but the practical affect is an overloading of the permitting process and unnecessary delays. All of these governmental agencies have similar goals - the need to assure an environmentally sound mining operation on the land. Why can't a lead agency be appointed on a case by case basis which would have overall jurisdiction? Is the legislation intended to make the process more complicated, thus discouraging mining, or is it intended to make the process more efficient, thus saving our economy the expense of interminable regulatory review processes?

(b) (2) (A) Definition of "Negligible Disturbance" -- This section implies that a plan of operations will be required whenever a drill rig is brought onto the claims or a cat track is cut to access the drill sites. The idea of requiring a full plan of operations in order to just put a few drill holes on the property offends my sense of what is appropriate. I suggest that "minimal activities" be expanded to include minor road building, construction of drill pads, and small bulk sample programs. Because such activities may have

more of an impact on the environment than just walking on the property, I suggest a two level system of operations plans review be considered. One process would apply to exploration activities, and one process would apply for development activities. The exploration phase would require, at most, a five page document which describes the contemplated activity on the property. The Secretary should be required to review and approve the plan within two weeks of submittal unless there is a finding that the plan is in violation of any regulation and that such violation will cause significant harm to the public or the environment. The development phase would require the more lengthy and thorough review.

(d) MINING PERMIT APPLICATION REQUIREMENTS. -- This is where a two level system of approval makes more sense (see (a) (2) (A) above). An example is the requirement for ground water monitoring for 12 months before a drill rig is put on the property (subsection 7). This is silly and inappropriate. However, for any drilling activity there should be a requirement that drill holes are either capped or filled with cement after drilling is complete (I think this is already required under state or local Health Department regulations regarding ground water). For any bulk sample program, a reclamation bond should be required.

(h) TERM OF PERMIT; RENEWAL. -- (1) 10 Year Term -- A term of 10 years is not long enough for the financing of most mining projects. While most of the gold mines recently opened in the West have operating lives of less than 10 years, most of the projects I have evaluated have operating lives running into decades. There should be no limit to the operating life, except that it should be defined in the plan of operations by the applicant. An example of this is the Henderson Mine in Colorado. The ore deposit was discovered in 1966, construction began in 1968, first ore production began in 1976, and full production was reached in 1980. Overall it took 14 years from discovery to full production. With an investment requirement of over $480 million, it was quite a risk for any company and a 10 year permit would not have even gotten it to full production. If there must be a time limit, 20 years after production commences is more appropriate.

(h) (2) One Year Term for Plan of Operations -- In most cases a mining project cannot be financed unless it has mining permits in place. Having been intimately involved in numerous attempts to finance new mining operations, I can saw with some authority that one year is no where near enough time. The owner should be given three years at a <u>minimum</u> to begin mineral activities on the property after the mine operations permit is issued.

(h) (3) Plan of Operations Renewal (See (h) (1) above) -- Most mining operations are constantly in technical violation of some regulation throughout their operating lives. I would guess that less than one percent are intentional violations or are violations which might cause some environmental or safety problem. It is just the nature of the business that unforeseen problems occur, and because there are now so many regulations regarding mining activities, there is bound to be one or two which are not being complied with at any given time. So the effect of these strict requirements for compliance is to make the mine owner subject to the personality and political persuasion of the administrator which must review the operation. If the operator gets a stickler for detail, life can be miserable. If it was my money to be invested in the operation, I would have a real difficult time advancing funds under such circumstances.

The following comments apply to both the initial mine permit and the 10 year renewal process. I suggest that the Secretary should be required to approve or renew the permit unless there is a violation of any regulation and such violation would cause a significant threat to the public or to the environment. In other words, if the operator is in substantial compliance with the regulations, and there is not a finding by the Secretary of wilful or negligent disregard for the welfare of the public or the environment, the operator should be reasonably assured of permit approval or renewal.

(n) (5) GRADING. -- This section seems quite vague. The whole section seems to rely on the subjective judgement of the Secretary. Certainly some work to blend an open pit into surrounding topography would be desirable from an aesthetic viewpoint, but there are no objective standards in the legislation that will allow a mine developer to estimate it's reclamation obligation. While blending with the surrounding topography might improve the view for a few seasons after mining is complete, natural processes will, in most cases, accomplish the same result. Why burden the mine operator (and our economy) with the expense when nature will do the work? When God is on your side, why do His work for Him?

(n) (6) REVEGETATION. -- I am not a soils or plant life specialist, but it seems to me the requirements under this section are so stringent that no revegetation effort could ever succeed. It would seem to me that there needs to be a little more flexibility in this.

(n) (10) FISH AND WILDLIFE. -- There needs to be more flexibility in this as well. The stringent standards set by this subsection should be applied only if there is a finding by the Secretary that the loss of the land would have a significant adverse impact on fish and wildlife.

(p) DEFINITIONS. -- (1) We have all seen the problems associated with the application of the term "best technology currently available." While the term makes drafting legislation more simple, it does not account for the economics of the particular situation to which it is applied. Allowing the Secretary discretion to determine the best technology currently available on a case by case basis places a lot of uncertainty in the process and subjects the mining company to one more regulatory decision which may be based more on politics than economics. I'm not as knowledgeable as I would like to be on this issue and as a result, I can't provide a reasonable alternative to accomplish the desired result (I guess I don't really understand what the desired result is!).

Section 202 -- INSPECTION AND ENFORCEMENT

(c) CITIZEN SUITS. -- I am opposed to this subsection. The practical effect will be that, where there are discretionary determinations by the Secretary, he or she will be forced to rule against the mine developer for fear of being sued. The Secretary will be subject to political and budgetary pressures not relating to the merits of the mine developer's position. In any case, the loser of any suit should pay attorneys' fees.

Section 202 -- STATE LAW AND REGULATION

In general I believe that, due to the differences in the conditions in the various states, state mine reclamation laws should be applied. If there are no state reclamation requirements, then the federal requirements should be applied. In other words, let the states administer their own reclamation standards, even if they are less stringent than federal standards, but if a state has no standards or there is a finding that a state's mine reclamation program has not been effectively enforced, then the federal standards should kick in.

Section 204 -- UNSUITABILITY REVEIW

(c) LAND USE PLANS (1) & (2) -- The ability of the Secretary to remove lands from location for mineral activities after a prospector has made a discovery on what was originally open ground is unreasonable. The unsuitability review standards and the political pressures on the Secretary virtually assure that whenever a promising mineral deposit is discovered, the land will be determined to be unsuitable for mining. The review standards listed in subsection (e) are broad enough that most any land could be declared unsuitable. I am reminded of a similar provision in Australian land use policy. The native population of Australia has asserted that mining is inappropriate for their "sacred sights." However, the natives do not identify the sights for fear of tourist encroachment. It has been quite amazing to see how many sacred sights are identified on newly discovered mineral sights only after the minerals are discovered.

If there is a need to identify land unsuitable for mineral development, the land should be identified before a prospector is led to believe it is open to mineral activities. This has already been accomplished through the wilderness system and the other land reservation programs defined in Section 205, so I do not see the need for any process of unsuitability review.

What happens if future physics research discovers that some obscure element, let's say bismuth, has unique properties which will provide us with cleaner air or water, or provide much cheaper and more environmentally acceptable sources of energy? Who will take the time and risk to go out and find sources of bismuth? I certainly would not want to risk my own funds for such a venture if I might lose it all in an unsuitability withdrawal.

Section 410 -- ROYALTY

This is an additional income tax on companies operating on federal lands. While I understand that the tax intended to pay for the use of the land, the person or company which made the original discovery and developed the reserve certainly had a hand in generating the wealth. The land wasn't worth much before the mineral discovery and the prospector created the wealth through his labor, so the prospector should benefit. The general thrust of our economic system has been that the persons or companies who invest the dollars, take the risks, and create the wealth should be rewarded. The concept of the royalty is rooted in feudal times when the "royalty" of the nation owned all property and granted concessions to only a favored few. Only when common citizens were allowed to own property and "free mining" was adopted in England in the 16th century, did the

quality of life for the common people begin to improve. With the imposition of a royalty and the punitive regulations envisioned by this legislation, it seems that congress will be moving us back to a system that never worked very well.

If congress believes that the mining industry does not pay its fair share, or that other mineral producing countries around the world tax their mining operations at similar rates (so that companies operating in the US are not at a competitive disadvantage), then an additional tax might be justified. However, please understand that when we tax something, we get less of it. So it means some mines will close and we will lose the jobs associated with those operations. It also means the mining companies required to pay the royalty will have less money to invest in exploration activities which means the loss of jobs on that end of the business as well as the loss of the wealth created when the exploration activities make a mineral discovery. The royalty is a bad idea, just as the BTU tax is a bad idea, because it places US industry at a competitive disadvantage relative to the rest of the world. I am sure that the economic policy makers in Japan, Germany, and Russia are chuckling with glee at the prospect of the US imposing such taxes on its industry.

CONCLUSION

I have recently heard many well respected and knowledgeable people express the view that mining is no longer a necessary activity for the health of our economy and that it should be discouraged because of the environmental damage that it causes. I think former Senator Tim Wirth said, "The West should be attractive, not extractive." Lectures recently sponsored by environmental groups assert that our economy is past the stage where resource development is important. We can all live off tourists and sell each other computers, cellular telephones, and fast food. In my view this is a siren song that is doomed failure because it is not based on sound economic theory. But it does allow some of the more irresponsible elements of the environmental movement to justify their positions on the issues. I am afraid this is another version of voodoo economics which I call "voodoo environmental economics." At best it is an untested economic theory that deserves a lot more study before it is applied.

After a thorough review of the proposed legislation, it is clear to me it is intended to stop any new mine development on federal lands. If the Congress believes the US can survive without a strong minerals industry, then God help us and God help the Democratic Party in the next few elections. People only have to look around their home or work place to see that everything they use comes from a mine, an oil well, a forest, or a farm. If the proposed legislation is passed as drafted, it will mean higher prices for virtually every mineral commodity. It will mean the US will become more and more dependent on foreign sources for minerals. Finally it will mean the net effect on the planet will be an overall deterioration in environmental quality as mines are shifted to countries with less stringent environmental standards. So if it is the goal of the environmental movement to improve world-wide environmental quality, this legislation will not accomplish the goal. Not only is the proposed legislation bad for the US economy, it is bad for the planet.

Thank you again for the opportunity to submit these comments. Please let me know if I am needed for testimony before the Committee on March 11.

Sincerely,

Rex E. Loesby

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